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95TH CONGRESS }
2d Session }

SENATE



FREEDOM OF INFORMATION:
A COMPILATION OF STATE LAWS

COMPILED BY THE
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE
AND PROCEDURE

OF THE
COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES SENATE



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Printed for the use of the Committee on the Judiciary

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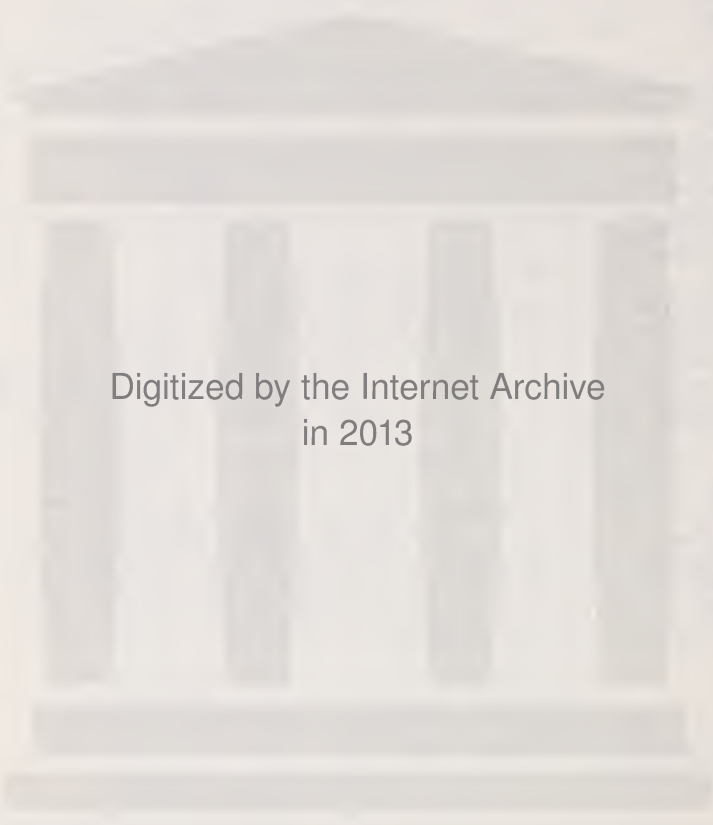
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INTRODUCTION

In 1977, a Freedom of Information Act (FOIA) took effect in the District of Columbia. The act provides the citizens of the District of Columbia an enforceable right of access to the records of the executive departments of their city government. With this public access statute, the District of Columbia joined 48 States with similar open records legislation. (Only Mississippi and Rhode Island are without such statutes, although county chancery court records in Mississippi and local council records in Rhode Island have been opened for public inspection.)

The public policy served by all freedom of information laws, both State and Federal, is well-reflected in the first section of the District of Columbia act:

Generally, the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

These policy goals can be achieved only if both citizens and officials are fully aware of their rights and responsibilities under freedom of information or open records legislation. To increase this awareness, the Subcommittee on Administrative Practice and Procedure, which has general oversight and legislative jurisdiction over the Federal Freedom of Information Act, is publishing this compilation of State FOIA, including the newly enacted District of Columbia statute and recently amended State statutes, reviewed as of October 1978.

Along with copies of the Federal and State laws, the compilation also includes a complete legislative history and legal analysis of the recently enacted District of Columbia FOIA. For these, we are grateful to the Division of Administrative Law and Practice of the District of Columbia Bar, Larry Ellsworth, chairperson.

It is our hope that this compilation will be a useful statutory guide and sourcebook for citizens using the District of Columbia and State freedom of information laws, as well as for legislators, judges, journalists and others concerned about public access to government records.¹

JAMES ABOUREZK, *Chairman,*
Subcommittee on Administrative
Practice and Procedure.

¹ For a more detailed summary and survey of state FOIA, see Wallis E. McClain (ed.), "Summary of Freedom of Information and Privacy Laws of the 50 States," *Access Reports*, October, 1978. For legal analysis of particular state FOIA see, e.g., "Access to Public Documents in Kentucky," 64 *Ky. L.J.* 165 (1975-76); "California Public Records Act: the Public's Right of Access to Governmental Information," 7 *Pacific L.J.* 105 (January 1976); Comment, "The Right to Inspect Public Records in Oregon," 53 *Oregon L. Rev.* 354 (1974); "Freedom of Information in Arizona: An Antidote for Secrecy in Government," *Arizona State L.J.* 111 (1975); Marino, "The New York Freedom of Information Law," 43 *Fordham L. Rev.* 83 (1974); Note, "Iowa's Freedom of Information Act: Everything You've Always Wanted To Know About Public Records But Were Afraid to Ask," 57 *Iowa L. Rev.* 1163 (1972); "Texas Open Records Act: A Section-by-Section Analysis," 14 *Houston L. Rev.* 398 (January 1977).

THE DISTRICT OF COLUMBIA BAR,
Washington, D.C., May 5, 1978.

Hon. James Abourezk,
*Chairman, Subcommittee on Administrative Practice and Procedure,
Committee on The Judiciary, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Just over a year ago, the District of Columbia Freedom of Information Act took effect, giving citizens of the District and others a right of access to Executive records of the District Government. This Act is patterned after the Federal Freedom of Information Act but differs from the Federal Act in several important respects. Extending the right of people to know to include District Government records has given rise to a demand for background materials on the new District law. Indeed, Mr. Chairman, it was of great interest that we learned of your own expression of interest in the legislative history of this vital new law. Thus heartened to learn that you agreed that it would be helpful to scholars, journalists, students, citizens' groups, government officials and others to have the D.C. FOIA's legislative history and other materials collected and published, the District of Columbia Bar (Unified) has undertaken this task of compilation in conjunction with your own staff's preparation for publication of these materials.

The Division of Administrative Law and Practice of the D.C. Bar has prepared the appended documents and materials which provide a basic source book for citizens who use the Act, for officials who must implement it, for judges who must interpret it, and for legislators who must oversee it. The assistance of Mr. Greg Mize on this project has been invaluable. He has collected not only those materials in the public record which have never before been published but also various other materials that the Council considered prior to the time of enactment.

It is hoped that this material will be useful to all those concerned with advancing an open government.

Sincerely,

LARRY P. ELLSWORTH, *Chairperson,*
Division of Administrative Law and Practice,
D.C. Bar.

FEDERAL FREEDOM OF INFORMATION ACT

§ 552. Public information; agency rules, opinions, orders, records, and proceedings.

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency

shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provisions of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the application time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency

responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsection (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

THE DISTRICT OF COLUMBIA FREEDOM OF INFORMATION ACT: LEGISLATIVE HISTORY AND RELATED MATERIALS

I. THE BASIC LEGISLATIVE HISTORY

[A Bill No. 1-119]

June 10, 1975

Councilmember Arrington Dixon introduced the following bill which was referred to the Committee on the Judiciary and Criminal Law

A Bill To create a Freedom of Information Act; to create rights and penalties; and for other purposes

Be it enacted by the Council of the District of Columbia, That this Act may be cited as the "Freedom of Information Act of 1975."

SEC. 2. Public Policy. It is hereby declared to be the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the the official acts of those who represent them as public officials and employees. To that end, the provisions of this Act shall be construed in every instance with the view toward complete public access.

SEC. 3(A). Section 1-1502 of the District of Columbia Code is hereby amended by inserting the following after the final ";" in Section 13: "(14) the term 'public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies."

(B) Section 1-1502 of the District of Columbia Code is hereby amended by striking "(14)", "(15)", and "(16)", and inserting "(15)", "(16)", and "(17)", in lieu thereof respectively.

SEC. 4. Access to Public Records from the Mayor and Agencies—

(A) Any person has a right to inspect or copy any public record of the Mayor or an agency, except otherwise expressly provided by Section 5 (exemptions) of this Act in accordance with reasonable rules concerning time and place of access.

(B) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. But fees shall not be charged for examination and review to determine if such documents are subject to disclosure.

(C) The Mayor or an agency, upon request for records made under this Act, shall within fifteen days (excepting Saturdays,

Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such determination shall constitute the final opinion of the Mayor or an agency as to the public availability of the requested public record.

SEC. 5. Exemptions—

(A) The following matters may be exempt from disclosure under the provisions of this Act :

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(3) Records of law enforcement agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by :

(a) disclosing identity of informants not otherwise known ;

(b) the premature release of information to be used in a prospective law enforcement action ;

(c) disclosing investigatory techniques not otherwise known outside the government ;

(d) deprive a person of a right to a fair trial or an impartial adjudication ;

(e) constitute an unwarranted invasion of personal privacy ;

(f) endanger the life or safety of a law enforcement officer.

SEC. 6. Information Which Must be Public. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information :

(1) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency ;

(2) administrative staff manuals and instructions to staff that affect a member of the public ;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases ;

(4) those statements of policy and interpretations of policy, Acts, and rules which have been adopted by the Mayor or an agency ;

(5) planning policies and goals, and interim and final planning decisions ;

(6) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby

the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the District, the public, of any private party;

(7) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(8) the minutes of all proceedings of all agencies and all votes at such proceedings.

SEC. 7. Enforcement—

(A) Any person denied the right to inspect a public record of the Mayor or an agency may petition the Corporation Counsel to review the public record to determine if it may be withheld from public inspection, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the trial court. If the Corporation Counsel declares the document to be a public record and the government body continues to withhold the record, the Corporation Counsel shall bring suit in the name of the District of Columbia in the trial court to enjoin the agency from withholding the records and to compel the production of documents for the person seeking disclosure.

(B) In any suit filed under section 7(A) of this Act, the court has jurisdiction to enjoin the Mayor or an agency from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter *de novo* and the burden is on the Mayor or an agency to sustain its action. The court may view the documents in controversy *in camera* before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(C) Except as to causes the court considers of greater importance, proceedings arising under Section 7(A) of this Act take precedence on the docket over all other causes and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he or she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him or her reasonable attorney fees or an appropriate portion thereof.

SEC. 8. Penalties. Any official who violates the provisions of this Act shall be subject to \$1,000 fine for each offense.

SEC. 9(a) This Act shall be codified in Chapter 15 of Title 1 of the District of Columbia Code, as Section 1-1511.

(b) Commissioner's Order No. 71-370, issued November 2, 1971, is hereby repealed.

SEC. 10. This Act shall take effect pursuant to the provisions of Sec. 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

AN AMENDMENT

In the Committee on the Judiciary and Criminal Law

By Councilmember David A. Clarke

[Sept. 1, 1976]

Strike all after the enacting clause and insert in lieu thereof:

That this act may be cited as the "Freedom of Information Act of 1976".

SEC. 2. The District of Columbia Administrative Procedure Act (82 Stat. 1203), as amended, is further amended by adding to the end thereof the following:

"TITLE II—FREEDOM OF INFORMATION

"PUBLIC POLICY

"SEC. 201. Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

"RIGHT OF ACCESS TO PUBLIC RECORDS; ALLOWABLE COSTS; TIME LIMITS

"SEC. 202. (a) Any person has a right to inspect and, at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by Section 204 of this title, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

"(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed ten (10) dollars for each request. For purposes of this subsection "request" means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review to determine if such documents are subject to disclosure.

"(c) The Mayor or an agency, upon request reasonably describing any public record, shall within ten days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

"(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and

expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, 'unusual circumstances' are limited to:

"(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

"(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

"(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 207 of this title to review the deemed denial of the request.

"LETTERS OF DENIAL

"SEC. 203. (a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

"(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 204 of this title relied on as authority for the denial;

"(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

"(3) notification to the requester of any administrative or judicial right to appeal under section 207 of this title.

"(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.

"EXEMPTIONS

"SEC. 204. (a) The following matters may be exempt from disclosure under the provisions of this title:

"(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

"(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

"(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

"(A) interfere with enforcement proceedings,

"(B) deprive a person of a right to a fair trial or an impartial adjudication,

“(C) constitute an unwarranted invasion of personal privacy,

“(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

“(E) disclose investigative techniques and procedures not generally known outside the government.

“(F) endanger the life or physical safety of law enforcement personnel;

“(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

“(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

“(6) Information specifically exempted from disclosure by statute.

“(7) Information specifically authorized by federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

“(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

“(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law.

“RECORDING OF FINAL VOTES

“SEC. 205. Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

“INFORMATION WHICH MUST BE MADE PUBLIC

“SEC. 206. Without limiting the meaning of other sections of this title, the following categories of information are specifically made public information:

“(a) the names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

“(b) administrative staff manuals and instructions to staff that affect a member of the public;

“(c) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

“(d) those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

“(e) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

“(f) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

“(g) the minutes of all proceedings of all agencies.

“ADMINISTRATIVE APPEALS AND ENFORCEMENT

“SEC. 207. (a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition:

“(1) If the Mayor denies the petition, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

“(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

“(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter *de novo*, and may examine the contents of such records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 204 of this title.

“(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

“OVERSIGHT

“SEC. 208. On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceding calendar year. The report shall include:

“(1) the number of determinations made by each agency not to comply with requests for records made to such agency under Section 4 of this title and the reasons for each such determination;

“(2) the number of appeals made by persons under Section 207(a) of this title, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

“(3) the names and titles or positions of each person responsible for the denial of records requested under this title, and the number of instances of participation for each such person;

“(4) a copy of fee schedule and the total amount of fees collected by each agency for making records available under this title; and

“(5) such other information as indicates efforts to administer fully this title.

“(6) for the prior calendar year, a listing of the total number of cases arising under Section 207 of this title, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 204 of this title was cited as a reason for denial of a request, and the total amount of fees collected under section 202(b) of this act. Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this title.

DEFINITION

“SEC. 209. For purposes of this title, the terms ‘Mayor’, ‘Council’, ‘District’, ‘agency’, ‘rule’, ‘rulemaking’, ‘person’, ‘party’, ‘order’, ‘relief’, ‘proceeding’, ‘public record’, and ‘adjudication’ shall have the meaning as provided in section 102 of Title I of this Act.

SEC. 3. The District of Columbia Administrative Procedure Act (82 Stat. 1203; D.C. Code sec. 1-1501 *et seq.*), as amended, is further amended by—

(a) renumbering sections 2 through 12 thereof as sections 101 through 111, respectively;

(b) inserting in the title heading “Title I Administrative Procedure” between section I of such Act and section 101 (as renumbered);

(c) striking out “Act” wherever it appears in sections 101 through 111 (as renumbered) and inserting in lieu thereof “title”;

(d) by adding to the end of section 102 (as renumbered) of such Act the following:

“(18) the term ‘public record’ includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.

“(19) the term ‘adjudication’ means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.”

(e) by striking “section 7” in section 105 (as renumbered) of such Act and inserting in lieu thereof “section 106.”

REPEALER

SEC. 4. Mayor’s Order 76-109, dated May 4, 1976, is hereby repealed.

EFFECTIVE DATE

SEC. 5. This act shall take effect pursuant to the provisions of section 602(c)(1) (D.C. Code #1-147(c)(1)) of the District of Columbia Self-Government and Governmental Reorganization Act.

A REPORTED BILL

[Sept. 1, 1976]

[No. 1-119]

A BILL To create a Freedom of Information Act; to create rights; and for other purposes

Be it enacted by the Council of the District of Columbia, That this act may be cited as the "Freedom of Information Act of 1976."

SEC. 2. The District of Columbia Administrative Procedure Act (82 Stat. 1203), as amended, is further amended by adding to the end thereof the following:

"TITLE II—FREEDOM OF INFORMATION

"PUBLIC POLICY

"SEC. 201. Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

"RIGHT OF ACCESS TO PUBLIC RECORDS; ALLOWABLE COSTS; TIME LIMITS

"SEC. 202. (a) Any person has a right to inspect and, at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by Section 204 of this title, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

"(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed ten (10) dollars for each request. For purposes of this subsection 'request' means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review to determine if such documents are subject to disclosure.

“(c) The Mayor or an agency, upon request reasonably describing any public record, shall within ten days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

“(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, ‘unusual circumstances’ are limited to:

“(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

“(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

“(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 207 of this title to review the deemed denial of the request.

“LETTERS OF DENIAL

“SEC. 203. (a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

“(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 204 of this title relied on as authority for the denial;

“(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

“(3) notification to the requester of any administrative or judicial right to appeal under section 207 of this title.

“(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.

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“SEC. 204. (a) The following matters may be exempt from disclosure under the provisions of this title:

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sure would result in substantial harm to the competitive position of the person from whom the information was obtained;

“(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

“(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

“(A) interfere with enforcement proceedings,

“(B) deprive a person of a right to a fair trial or an impartial adjudication,

“(C) constitute an unwarranted invasion of personal privacy,

“(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

“(E) disclose investigative techniques and procedures not generally known outside the government,

“(F) endanger the life or physical safety of law enforcement personnel;

“(4) Inter-agency or intra-agency memorandum or letters which would not be available by law to a party other than an agency in litigation with the agency;

“(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

“(6) Information specifically exempted from disclosure by statute.

“(7) Information specifically authorized by federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

“(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

“(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law.

“RECORDING OF FINAL VOTES

“SEC. 205. Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

“INFORMATION WHICH MUST BE MADE PUBLIC

“SEC. 206. Without limiting the meaning of other sections of this title, the following categories of information are specifically made public information:

“(a) the names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

“(b) administrative staff manuals and instructions to staff that affect a member of the public;

“(c) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

“(d) those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

“(e) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

“(f) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

“(g) the minutes of all proceedings of all agencies.

“ADMINISTRATIVE APPEALS AND ENFORCEMENT

“SEC. 207. (a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition:

“(1) If the Mayor denies the petition, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

“(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

“(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter *de novo*, and may examine the contents of such records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 204 of this title.

“(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

"OVERSIGHT

"SEC. 208. On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceding calendar year. The report shall include :

"(1) the number of determinations made by each agency not to comply with requests for records made to such agency under Section 4 of this title and the reasons for each such determination ;

"(2) the number of appeals made by persons under Section 207(a) of this title, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information ;

"(3) the names and titles or positions of each person responsible for the denial of records requested under this title, and the number of instances of participation for each such person ;

"(4) a copy of the fee schedule and total amount of fees collected by each agency for making records available under this title ; and

"(5) such other information as indicates efforts to administer fully this title.

"(6) for the prior calendar year, a listing of the total number of cases arising under Section 207 of this title, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 204 of this title was cited as a reason for denial of a request, and the total amount of fees collected under section 202(b) of this act. Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this title.

"DEFINITION

"SEC. 209. For purposes of this title, the terms 'Mayor', 'Council', 'District', 'agency', 'rule', 'rulemaking', 'person', 'party', 'order', 'relief', 'proceeding', 'public record', and 'adjudication' shall have the meaning as provided in section 102 of Title I of this Act."

SEC. 3. The District of Columbia Administrative Procedure Act (82 Stat. 1203; D.C. Code sec. 1-1501 *et seq.*), as amended, is further amended by—

(a) renumbering sections 2 through 12 thereof as sections 101 through 111, respectively ;

(b) inserting in the title heading "Title I Administrative Procedure" between section 1 of such Act and section 101 (as renumbered) ;

(c) striking out "Act" wherever it appears in sections 101 through 111 (as renumbered) and inserting in lieu thereof "title" ;

(d) by adding to the end of section 102 (as renumbered) of such Act the following :

"(18) the term 'public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.

“(19) the term ‘adjudication’ means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.”

(e) by striking “section 7” in section 105 (as renumbered) of such Act and inserting in lieu thereof “section 106”.

REPEALER

SEC. 4. Mayor's Order 76-109, dated May 4, 1976, is hereby repealed.

EFFECTIVE DATE

SEC. 5. This act shall take effect pursuant to the provisions of section 602(c) (1) (D.C. Code #1-147(c) (1)) of the District of Columbia Self-Government and Governmental Reorganization Act.

Council of the District of Columbia Report

City Hall, 14th and E Streets, N.W. 20004 Fifth Floor 638-2223 or Government Code 137-3806

78 SEP-1 3 4:50

OFFICE OF THE SECRETARY
DISTRICT OF COLUMBIA COUNCIL

Bill No. 1-119

"District of Columbia Freedom of Information Act of 1976"

REPORT OF THE COMMITTEE ON THE JUDICIARY AND CRIMINAL LAW

David A. Clarke, Chairperson

September 1, 1976

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Committee on the Judiciary & Criminal Law:
David A. Clarke, Chairperson
Arrington Dixon, Member
Sterling Tucker, Ex-Officio Member
Gregory E. Mize, Staff Director & Counsel
Robert Jenkins, Deputy Clerk
Bette Vest, Secretary

Council of the District of Columbia Report

City Hall, 14th and E Streets, N.W. 20004 Fifth Floor 638-2223 or Government Code 137-3806

To Members of the Council of the District of Columbia

From Committee on the Judiciary and Criminal Law,
David A. Clarke, Chairperson

Date September 1, 1976

Subject Bill No. 1-119, the "D.C. Freedom of Information Act of 1975"

The Committee on the Judiciary and Criminal Law, to which Bill No. 1-119 has been referred, having considered the same, reports favorably on the bill as amended.

PURPOSE OF THIS LEGISLATION

The purpose of this bill is to grant to the citizens of the District of Columbia a statutory right of access to information held by the executive branch of the local government. With passage of this bill, the District of Columbia would join the 45 states which already have open records legislation. In so doing, this bill seeks to clarify the full range of information the public may obtain, with the specific categories of information which are justifiably exempt from disclosure by the government.

In particular, this bill aims at providing the citizens of the District of Columbia with a mechanism for enforcing their right of access to certain government records -- a serious weakness of the prior executive order. Through the right of judicial review, procedural guidelines and sanctions for non-compliance, this bill seeks to accomplish a level of implementation which the current open information policy under Mayor's Order 76-109 was never structured to perform. (This Order is Attachment No. 1)

BACKGROUND OF THIS LEGISLATION

Bill No. 1-119 was introduced by Councilmember Arrington Dixon on June 10, 1975. This bill would replace the existing freedom of information policy set forth in Mayor's Order 76-109.

The staff of the Committee on the Judiciary and Criminal Law began its analysis of Bill No. 1-119 during the fall of 1975. A preliminary analysis comparing the provisions of this bill with the then existing freedom of information standards provided in Commissioner's Order 71-370 (November 2, 1971) and the Federal Freedom of Information Act (5 U.S.C.

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§552) was prepared by the D.C. Project legislation unit (Georgetown University Law Center) on October 3, 1975. On December 8, the D.C. Project submitted a broader section-by-section analysis which incorporated the noteworthy provisions of state open records legislation and major court decisions.

During this time, the D.C. Bar, Division I, Committee on Access to Government Information, prepared an extensive analysis of Bill No. 1-119 from both a legal and practical perspective. The Bar Committee also drafted a substitute bill which embodied its analysis. Both the analysis and the bill were delivered to the Committee on January 14, 1976.

The Committee on Government Operations, chaired by Councilmember Arrington Dixon, was referred Bill No. 1-119 for purposes of comment and recommendation. That Committee submitted a section-by-section analysis and evaluation on recommending adoption of the bill.

During the period of March through December of 1975, the D.C. Public Interest Research Group (D.C. P.I.R.G.) conducted a survey of D.C. government agencies to ascertain compliance with Commissioner's Order 71-370. The D.C. P.I.R.G. survey, using actual requests for information needed by other P.I.R.G. projects was conducted with the knowledge and input of your committee staff.

On January 28, 1976, the Committee held public hearings on Bill No. 1-119; a copy of the notice and witness list follows this narrative. (Attachment No. 2). In addition to the oral testimony at hearings, the Committee has on record the written comments of community organizations as follows:

| <u>Organization</u> | <u>Representative</u> |
|---|------------------------------------|
| American Civil Liberties Union (ACLU) | James Heller Marilyn Welles |
| D.C. Public Interest Research Group (D.C. P.I.R.G.) | Robert Fisher Suki Parks |
| D.C. Corporation Counsel | William Robinson |
| D.C. Bar Committee on Access to Government Information | Lawrence Ellsworth, Chairperson |
| Apartment and Office Building Association (AOBA) | John T. O'Neill |
| Common Cause | Maureen Limpert William Garetz |
| Capitol Hill Restoration Society | Richard Wolf |
| C & P Telephone Company | Delano Lewis |
| Citizen | Ted Prahinski |

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OrganizationRepresentative

Jewish Community Council of Greater Washington

Judge William Levy

Throughout the spring of 1976 the committee staff directed further legal research conducted by the D.C. Project. This work culminated in an extensive comparative analysis which focused particularly upon issues raised on the public record, notably, the intermediate administrative appeal process and the exemptions from the act.

In order to achieve the best policy result for the District of Columbia under the constraints of the Self-Government Act, the Committee carefully compared the provisions of the federal act and its recent amendments, the D.C. Bar proposed amendments, and the provisions of Bill No. 1-119 as introduced. The combination of provisions which resulted from this process led your committee to report an amendment in the nature of a substitute for Bill No. 1-119.

NEED FOR THIS LEGISLATION

The need for a D.C. Government policy of open citizen access to information held by the government is a matter of long standing accord. The need is not for agreement on the existence of a policy, but for a policy which has the force of law; a policy which is fully implemented and enforceable by the citizens for whom the policy is written.

Were it not for a drafting oversight, the District would have been included under the federal Freedom of Information Act of 1966. 1/ Later Congressional bills to bring the District under the federal law were forestalled by the promise of then Mayor-Commissioner Walter Washington to establish the policy on the local level. 2/ Mayor-Commissioner Washington established this policy by issuing Commissioner's Order 71-370, dated November 2, 1971. (This policy was recently recast as Mayor's Order 76-109, dated May 4, 1976.) The great weight of evidence before your committee indicated that the order has failed to implement the freedom of information policy.

The broadest documentation of the failure of District policy under the Mayor's Order was provided by a D.C. Public Interest Research Group (DC PIRG) survey. Between March 1975 and January 1976, PIRG tracked 85 information requests to D.C. agencies. 36 requests (42 percent) received no response whatever. 23 responses (27 percent) were either late, incomplete or otherwise in violation of the Mayor's Order 76-109. Of the total of 85, only 26 of the responses (31

1/ Testimony of Benny Kass, Esq., Public Hearings on Bill No. 1-119, Committee on the Judiciary and Criminal Law, Council of the District of Columbia, January 28, 1976 (hereafter cited as "DC FOIA Hearing").

2/ Ibid.

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percent) were satisfactory. 3/ In short, over two-thirds of the government responses to D.C. P.I.R.G. requests violated the executive order which required governmental response within ten days along with reasons for any withholding or delay. Other witnesses at the public hearings gave personal accounts of the government's intransigence in the face of the government's own regulation. As stated at the outset, the need is not for a policy per se, but for a policy with operational enforcement mechanisms to break the ice of governmental inertia. (See survey chart, Attachment No. 3)

A particularly graphic display of the government's restrictive posture was provided by the Washington Star-News:

Item: On December 16, it was disclosed that St. Elizabeth's Hospital, a federal institution, had lost its national accreditation, its seal of approval in the hospital world. The full text of the accreditation report was available immediately from the National Institute of Mental Health.

On December 10 District Officials had announced that D.C. General Hospital had lost its accreditation. But the local officials made public only a one-page summary of the hospital's deficiencies, and specifically denied a request for the full report -- the equivalent of the document released readily by NIMH.

Citing the Mayor's 1971 freedom-of-information order, The Washington Star on December 11 requested the full report, but not until four weeks later, January 8, were copies of the document distributed. District officials justified the delay by saying they had been preparing an appeal in the interim period. 4/

The Star also cited the case of an attorney who was denied access to the minutes of a public meeting of the Health Planning Advisory Committee. After delay, she was finally allowed access to the documents but forbidden to make copies except by hand. After further delay, she was finally allowed to make copies. 5/

An example from the D.C. P.I.R.G. files indicates the enforcement problems with regard to the intermediate appeal step to the Public Information Review Board under Commissioner's Order 71-370. As with previous examples, this request involved the District's largest agency, the Department of Human Resources. On November 3, 1975, Robert Fisher wrote DHR Director Joseph Yeldell requesting copies of site visit reports for community health centers. There was no response. On December 22, 1975, Mr. Fisher wrote Martin Schaller, the Secretariat of the District who chairs the Public Information Review Board.

3/ Testimony of Suki Parks and Robert Fisher of D.C. P.I.R.G., DC FOIA Hearings.

4/ Robert Pear, "D.C. Government Stands Alone as Bastion of Secrecy," Washington Star-News, Section A, p. 1, February 7, 1976.

5/ Ibid.

Appeal to this board is the only recourse under the executive order for citizens who are denied information. There was no response from Mr. Schaller. On February 23, 1976 -- three months and twenty days after the initial request -- Mr. Fisher received an undated response from DHR approving access to the information. It is noteworthy that in January Mr. Fisher testified before this Committee on the subject of open records legislation. Mr. William H. Whitehurst, Jr., DHR Associate Director for Planning and State Agency Affairs, explained the delay as follows:

The staff person who was given the letter found that you were not listed with the telephone company nor on the rolls of the D.C. Election Board. Your letter did not indicate affiliation with any particular group, so it was set aside until your recent testimony before the City Council. 6/

Your Committee finds that the survey information and the testimony before it reveals a disturbing record of government inertia in some instances, deliberate noncompliance with the prior executive order. Even in those instances where the requirements of the order were clear, the record indicates that they were sometimes ignored. In some instances where they could not be ignored, the requirements of the executive order were used to excuse delay. It is with this record before it that your Committee has endorsed the purposes of Bill No. 1-119.

IMPACT ON EXISTING LAW

Bill No. 1-119, as amended in committee, would replace Mayor's Order 76-109, dated May 4, 1976, which substantially tracks an executive order issued under old Commissioner's Order 71-370, dated November 2, 1971. The following narrative outlines the changes Bill No. 1-119 would bring about compared with the above noted executive order, noting major policy considerations where appro- (next page)

6/ Correspondence on file with the Committee on the Judiciary and Criminal Law.

priate. For a more accurate account of the details of Bill No. 1-119 as amended in committee, see the section-by-section analysis of this report.

Statement of Policy: Section 201

The bill makes an explicit statement of policy. Such a statement did not exist in either the Mayor's Order or in federal law, although the legislative history of the federal Act of 1974 did refer to goals of "efficient, prompt, and full disclosure . . . " 7/ The language of amended Bill No. 1-119 (directed toward construction "in every instance with the view toward expanding public access, and the minimization of costs and time delays to persons requesting information") is placed in the legislation to make clear that any actions should serve the purpose of access and that any restriction on that access should be construed narrowly.

Right of Access, Costs and Time Limits: Section 202

Bill No. 1-119 as amended and the Mayor's Order both provide for an initial 10 day period for government response. Both the subject bill and the Mayor's Order require that a response on a denial must include a statement of reasons and a statement as to rights of appeal.

Bill No. 1-119 first departs from the Mayor's Order on provisions for an extension. The Mayor's Order allows delay for an open ended period on a broad range of criteria. Bill No. 1-119 more strictly limits further delay to 10 days and only upon specified unusual circumstances such as with a request for voluminous separate records or records which exist in other agencies or in which other agencies have an interest.

The Mayor's Order establishes a fee schedule with no ceiling on total costs chargeable to a requester of information. The bill seeks to strike a balance between the government's interest in recouping expenses and the public interest in safeguarding against charges which would discourage access to information. Accordingly, the bill allows agencies to charge actual copying costs, but allows only a \$10 maximum as a searching charge for a request within any particular agency. It is the Committee's position that government delays due to inefficiency or negligence requiring more than \$10 worth of searching time should not result in a fee which would discourage information requests and which would arbitrarily discriminate against requestors, depending upon which file happens to be hard to find or who happens to be looking for it.

Probably the most significant departure from the Mayor's Order with regard to initial requests is that the bill treats a "no response" by the government as a final denial for which a citizen can seek judicial relief or at the citizen's discretion, review by the Mayor.

7/ H.R. Rep. No. 93-876, 93rd Cong., 2d Sess., at 5 (1974).

The lack of this kind of enforcement mechanism is the principal weakness of the Mayor's Order whereby agencies risk practically nothing by not responding to a request.

An issue linked to the "no response" problem is that of identification of the record. Congress found in analyzing the federal Freedom of Information Act that agencies used the lack of identification as a general excuse for withholding records. 8/ Bill No. 1-119 seeks to correct this by clarifying the nature of a sufficient request: "any request reasonably describing any public record." This report further amplifies about the kinds of information which would constitute a reasonable description.

Letters of Denial: Section 203

Like the Mayor's Order, Bill No. 1-119 as amended requires that letters of denial state the reason for denial, reference to the right of appeal, and that a file be kept of such letters. The subject bill also requires that the letter state the names of any employees or officials responsible for the denial. This latter provision tracks the federal law; it is necessary for ultimate enforcement if officials who abuse their discretion are to be disciplined.

Exemptions: Section 204

The only exemptions from disclosure on which the Mayor's Order and Bill No. 1-119 are in alignment are the exemptions for unwarranted invasion of personal privacy and for information exempt by statute.

While the Mayor's Order exempts all intra-agency memoranda or letters, the bill exempts only those which would not be available by law to a party other than an agency in litigation with the agency. This exemption should be read, however, together with those items which are specifically made public by the act. One such item is any agency letter or memorandum in which the agency states an opinion about the rights of the District, the public or any private party. 9/

In addition to intra-agency memoranda, the Mayor's Order also explicitly exempts reports and memoranda of consultants or independent contractors, except to the extent they would be required to be disclosed if prepared by the agency. Bill No. 1-119 has no such explicit mention of consultant work product, but would treat such documents as though prepared by the agency.

The Mayor's Order has a broad exemption for law enforcement investigatory and inspection files, except to the extent available by law to a party other than an agency. Bill No. 1-119 provides for the exemption of investigatory records but only to the extent that such disclosure would interfere with enforcement proceedings, deprive a person of a fair trial, constitute an unwarranted invasion of personal privacy, disclose the identity of a confidential source of information from such a source, disclose investigative techniques and procedures not generally known outside the government, or endanger the life or safety of a law enforcement officer.

8/ S. Rep. No. 93-854, 93rd Cong., 2d Sess., at 9-10 (1974).

9/ Section 206 (e) of Bill No. 1-119 as amended in committee.

In short, the bill seeks to strike a balance for maximum disclosure even of law enforcement information, but not in cases where the information would endanger people, interfere with due process or seriously hamper law enforcement efforts.

Both Bill No. 1-119 as amended and the Mayor's Order exempt trade secrets, but the bill is more limited in scope. The Mayor's Order refers to "commerical or financial information obtained from a person under an agreement of confidentiality." Like the federal law, this language expands the common law definition of a trade secret to include "commercial and financial information."

The federal language differs from the Mayor's Order by substituting for the phrase "under an agreement . . ." the phrase "and privileged or confidential."^{10/} Because the Federal Courts have interpreted this language strictly, the committee would have adopted the federal language verbatim except for a judicial conflict over interpretation of the phrase "privileged or confidential." Your committee resolved this ambiguity by utilizing the interpretation placed on the phrase by the D.C. Circuit Court of Appeals, namely, that such information must be likely to "cause substantial harm to the competitive position of the person from whom the information was obtained."^{11/}

The bill has two exemptions which do not appear in the Mayor's Order: First, the bill exempts test questions and answers to be used in future licensing, employment or academic examinations (so long as the questions or answers have not been used in previous examinations). Secondly, the bill exempts properly classified national defense or foreign policy information.

Final Votes: Section 205

Unlike the Mayor's Order, the bill explicitly states that the final votes of agencies must be available for public inspection.

Information Which Must Be Made Public: Section 206

The bill's mandate that the specifically listed kinds of information be public records is not covered at all by the Mayor's Order. These categories include government employee name, position and salary information; final opinions; administrative manuals; policy statements and interpretations;

^{10/} 5 U.S.C. sec. 552 (b) (4).

^{11/} National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

correspondence stating an opinion as to rights of the government, the public or private individuals; information dealing with public funds; and the minutes of agency proceedings.

Administrative Appeals and Enforcement: Section 207.

The most significant changes over the Mayor's Order pertain to enforcement. If a citizen was denied information under the Mayor's Order (or received no response), the only recourse was to appeal to the Public Information Review Board. The Board could then recommend action to the Mayor. If the Mayor did nothing, there was no right to appeal to the Courts. In public testimony, the Chairperson of that Board indicated that the Board met only several times since its inception; that he made a point of not calling hearings because they are time consuming and expensive; and that the Board had a public member vacancy for several years. ^{12/} The record before your committee is clear that the the Mayor's Order and the prior Commissioner's Order had no operational enforcement other than the informal efforts of the Chairperson of the Board, who was also the Secretariat of the District, an officer who reports to the Mayor.

The bill provides for an intermediate informal administrative appeal to the Mayor if an information request is denied by an agency. Ten days are allowed for the Mayor's written decision. The decision of the Mayor or a failure to respond within the 10 day period are treated by the bill as final decisions. The bill allows an appeal to the Mayor and/or directly to the Superior Court in this case. Any agency information withholding after the Mayor decides to disclose such information may be remedied by court order.

The further impact of Bill No. 1-119 as amended upon existing law is provided in the section-by-section analysis of this report.

EXECUTIVE COMMENTS

Executive branch comments on Bill No. 1-119 were presented by Mr. William Robinson, Assistant Corporation Counsel. Mr. Robinson submitted a written statement and testified at the public hearing on January 28, 1976. His remarks were concluded by the following statement: "The District Government is not in opposition to a freedom of information bill. We are suggesting here . . . some areas we believe should be clarified . . ."

A summary of the points made by Mr. Robinson in his testimony follows:

Exemptions: The provisions of Bill No. 1-119 as introduced are not sufficient; the federal model should be followed because of the strength of the case law. In particular, exemptions should be provided for information now exempt from disclosure by statute and for investigation records for law enforcement.

Information Requests: The guidelines as to what constitutes a request for information to which an agency can respond are not specific enough in

^{12/} Testimony of Mr. Martin Shaller, Secretariat of the District, DC FOIA Hearing.

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Bill No. 1-119 as introduced.

Conflict of Interest: It would be a conflict of interest to place the Corporation Counsel in the position of an intermediary appeal officer or for the Corporation Counsel to bring suit against District agencies or officers for failure to comply with the act.

Court Procedure: The requirement for the Superior Court to give precedence to freedom of information cases on its docket may run afoul of the District Charter restrictions on legislation which changes the organization of the courts.

Omissions: The act should contain a common definitions section. The act should provide for some form of administrative review of denials so as to reduce unnecessary litigation. There should be provisions for a schedule of fees to defray the costs of disclosure. It should be clear that independent agencies now not covered by the Mayor's Order would be covered by the act.

Enforcement: Following his prepared statement, Mr. Robinson stated that, "One of the problems associated with the existing order is that there are no real enforcement sanctions." He referred to the federal model which has administrative review and sanctions for government officials who are found to have illegally withheld information.

[The full text of the prepared statement presented by Mr. Robinson appears as Attachment No. 4 to this report.]

Your committee believes that Bill No. 1-119 as amended corrects the deficiencies addressed by Mr. Robinson and incorporates most of the suggestions made by Mr. Robinson.

FISCAL IMPACT

Bill No. 1-119 as amended in committee should not have a substantial fiscal impact. Provisions under consideration which would have had a burdensome effect, such as requiring each agency to index all of its records, were not adopted for that very reason. The specific impact of the bill is best addressed in terms of the administrative duties imposed by the bill:

Copying of public documents: The bill allows agencies to charge persons requesting information for the costs of reproduction. There should be no fiscal impact due to this provision.

Searching for public documents: The bill allows agencies to charge for the time of employees spend in searching for records, but with a limit of \$10 for each request to an individual agency. This amount is expected to cover the vast majority of requests. While some requests may require search time which costs in excess of \$10, these are practically impossible to project but may be possible to prevent by more efficient records management. The impact of such instances should not be significant.

Appeals Process: Any intermediate appeal to the Mayor upon denial

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of information would likely involve a role similar to that played by the Secretariat of the District, Mr. Martin Shaller, under the Mayor's Order. Mr. Shaller chaired the Public Information Review Board and received all appeals. The Board, however, rarely met, and Mr. Shaller investigated the appeals personally. With the Mayor established as an intermediate appeal officer by Bill No. 1-119 as amended in committee, the Secretariat's actual role under the Mayor's Order would be closely analogous to the Mayor's role under the bill.

Mr. Shaller testified at the January 28, 1976 public hearings on the issue of the costs of administration of this appeals process. The transcript of that portion of the hearing reads as follows:

Mr. Mize: Has the executive attempted to do a costing out of the implications of this bill?

Mr. Robinson: No we have not. We have no information with respect to possible costs . . .

Mr. Shaller: It would require at least a clerical person and part-time professional person to devote his time to it. For example, I have in my present budget a request for an immediate staff assistant who would do many other things, but he would also do this which I am now personally doing myself, as I am not able to delegate to anyone else on the staff at the present time.

So, talking about personnel, an existing person could do it and one clerical person. So, I think the initial cost would be minimal.

Mr. Clarke: You are already asking for that person?

Mr. Shaller: I'm already asking for that person with the intent that he operate under present procedures. Now, Mr. Robinson says that you intend to broaden this and we will probably get a larger number of inquiries than we do now. However, from past precedent, I doubt whether we would get very many more.

Mr. Clarke: So that staff that you are asking for for the present would be able to take care of the future?

Mr. Shaller: I believe he would.

Mr. Clarke: So there really wouldn't be a fiscal effect in terms of your staff?

Mr. Shaller: No. Possibly a clerical person, however.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the title: "District of Columbia Freedom of Information Act of 1976."

Section 2 is the amending clause which provides for amendment of the D.C. Administrative Procedure Act by adding a second title for freedom of information, the proposed codified sections of which follow. Section numbers refer to those proposed codified sections.

Section 201 establishes an explicit public policy for the D.C. Government entitling citizens to full and complete information regarding the affairs of government and official acts of government officials and employees. When interpreting this title, courts are given a guideline promoting maximum public access and minimum costs and time delays for persons requesting information.

Section 202 (a) establishes the right of any person to inspect and copy any public record of the Mayor or an executive or independent agency. This right is qualified by the exemptions provided by section 204 and also by reasonable rules to be issued by the Mayor or an agency governing times and places for inspection.

Section 202 (b) provides for allowable fees to be charged to persons requesting information, but not to exceed the costs of mechanical reproduction and searching. The fee for searching is further limited to a maximum of \$10 for each request. Such fees can be reduced or waived when the Mayor or an agency determines that the information will primarily benefit the general public. Any costs incurred for examination and review to determine whether documents can be withheld under the exemptions of section 204 cannot be charged to the person requesting the information.

Section 202 (c) stipulates that within 10 days of receiving a request reasonably describing a public record, the Mayor or agency must either make the record accessible or give notice of its decision to withhold any part of the requested record and the reasons for withholding. It is the intent of your committee that a reasonable request would be sufficient if it contained the general subject matter involved and reference to the official or to an office within an agency which was either the source or office responsible for keeping the record; or reference to a public meeting or the minutes thereof; or reference to an approximate date of issuance. It is your committee's intent that the ten day time period encompasses the requirement that notice to the requestor and opportunity for access occur within such time.

Section 202 (d) provides for an extension for government response of 10 days under unusual circumstances. "Unusual circumstances" are those limited specifically to: (1) the need to search, collect and examine voluminous separate records which are demanded within a single request; or (2) the need for consultation with another agency having a substantial in-

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terest in the release of the information, or for consultation between two or more components of the same agency with a substantial interest in the subject.

Section 202 (e) makes any failure of the government to comply with a request as required by the time and notice provisions of section 202 equivalent to a denial and an exhaustion of administrative remedies. Without any need for an intermediate appeal, a person requesting information who is so denied information may immediately seek judicial relief or may voluntarily seek review by the Mayor pursuant to section 207 of the bill.

Section 203 (a) requires the contents of a letter of denial to include at least the following: (1) specific reasons for the denial as provided by section 204; (2) the names of the officials or employees responsible for the decision to deny the request; and (3) notification to the requestor of any administrative or judicial right to appeal the denial as provided by section 207.

Section 203 (b) requires the Mayor and each agency to maintain a file of all letters of denial. This file would be open to any person request for inspection and copying.

Section 204 (a) provides those specific matters which would be exempt from disclosure:

(1) Trade secrets and commercial or financial information obtained outside the government, but only to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained. The language of this exemption was adopted so as to follow the D.C. Circuit Court of Appeals interpretation of the federal trade secret exemption. See the impact on existing law analysis of this report for an explanation of this exemption.

(2) Information of a personal nature where public disclosure would constitute a clearly unwarranted invasion of personal privacy. The language of this exemption was adopted so as to restrict its scope to information which would otherwise enjoy constitutional protection. It should be noted that under the segregability provisions of section 204, the personal nature of information could be remedied through deletion of identifying references such as names and addresses.

(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and also confidential information furnished only by the source, but such information is exempt only to the extent that such information is part of a record compiled by a law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation,

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(E) disclose investigative techniques and procedures not generally known outside the government, or (F) endanger the life or physical safety of law enforcement personnel. The committee adopted the federal language for purposes of this exemption, with the exception of paragraph (E) which exempts disclosure of investigative techniques and procedures as does the federal language, but which further limits such disclosure to information not generally known outside the government.

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. For this exemption, the committee adopted the language of the federal Act. It should be noted, however, that the public record provisions of section 206 might require the disclosure of all or part of an inter- or intra-agency communication which would otherwise be exempt.

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

(6) Information specifically exempted from disclosure by statute. The committee worded the language of this exemption so as to parallel the federal Act.

(7) Information specifically authorized by federal law under criteria established by Presidential executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such executive order.

Section 204 (b) provides that any reasonably segregable portion of a public record shall be provided to any person requesting a record after deletions are made which are specifically allowable under the exemptions provided by section 204 (a).

Section 204 (c) clarifies that section 204 does not authorize the withholding or limit the availability of any records except those specifically exempted. Nor does the section authorize the withholding of any information from the Council of the District of Columbia whatsoever. Nor does it authorize non-disclosure ~~which~~ disclosure is authorized or mandated by law. *where*

Section 205 requires each agency having more than one member to maintain and make available a record of the final votes for each member in each proceeding of the agency.

Section 206 stipulates specific categories of information which are public and not subject to withholding:

(a) names, salaries, title, dates of employment for government employees and officers;

(b) administrative manuals and instructions to staff;

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(c) final opinions made in adjudication of cases, including orders and concurring and dissenting opinions;

(d) policy statements and interpretations of policy, acts and rules;

(e) correspondence and materials referred to in correspondence relating to regulatory, supervisory or enforcement responsibilities wherein the agency states or is asked to state an opinion about the rights of the District, the public or any private party;

(f) information dealing with the receipt or expenditure of public funds; and

(g) minutes of all proceedings of all agencies.

Section 207 (a) sets forth the procedures for administrative appeal upon the denial of an information request. Upon denial, the requestor may petition the Mayor for review; a decision must be rendered in writing with reasons within 10 days. Such review by the Mayor does not encompass a formal hearing as contemplated by the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509). If the Mayor denies the request upon review, then the requestor may seek judicial review in the Superior Court. If the Mayor decides that the record may not be withheld, disclosure shall be required immediately. If the agency still withholds the information, the requestor may seek enforcement of the disclosure through the Superior Court.

Section 207 (b) is a statement of judicial authority to enjoin an agency from withholding records and to order the production of records improperly withheld. The section further provides that a reviewing court shall determine the matter de novo and may examine records in camera to determine whether the grounds for withholding are valid.

Section 207 (c) allows the court to award reasonable attorney fees and litigation costs to a requestor who prevails in court.

Section 208 requires the Mayor to submit an annual report covering disclosure activities of each agency of the entire Executive Branch for the previous calendar year. This report must be presented to the Chairperson of the Council by June 30 of each year. The report must include the following:

- (1) the number of requests with which each agency did not comply;
- (2) the number of appeals made to the Mayor, the result of such appeals, and the reason for the action upon each appeal that results in the denial of information;
- (3) the name and position of each person responsible for the denial of records requested and the number of instances each person participated in a denial;
- (4) a copy of every rule made by each agency regarding this title;
- (5) a copy of fee schedules and total amounts of fees collected

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by each agency under this title;

(6) any other information indicating administrative efforts under this title; and

(7) the total number of cases arising under section 207, the total number of cases where a request was denied in whole or in part, the total number of times in which each exemption provided by section 204 of this title was cited as a reason for denial of a request, and the total amount of fees collected under section 202 (b) of this title. This report also requires a description of the Mayor's enforcement efforts for this title.

Section 209 incorporates the definitions of various terms by reference to the District of Columbia Administrative Procedure Act, section 3.

Section 3 of the act (which is not a codified section) makes a number of technical amendments to section 3 of the District of Columbia Administrative Procedure Act, and adds thereto the definition for two terms used in this act, namely, "public record," and "adjudication."

Section 4 of the act explicitly repeals the Mayor's Order 76-109.

Section 5 of the act provides the effective date in conformity with the District of Columbia Self-Government Act.

COMMITTEE ACTION

On September 1, 1976, your committee voted to favorably report to the Council the Clarke amendment in the nature of a substitute to Bill No. 1-119. The record of that vote was: two (2) in favor (Clarke and Dixon) and none opposed. The committee also voted at that time to approve this report: two (2) in favor (Clarke and Dixon) and none opposed.

Bill No. 1-119, the "District of Columbia Freedom of Information Act of 1976"
September 1, 1976

ATTACHMENTS

TO THE

COMMITTEE REPORT

1. Mayor's Order 76-109, dated May 4, 1976
2. Hearing Notice and Witness List
3. DC PIRG Survey Chart
4. Testimony of Mr. William Robinson,
Assistant Corporation Counsel

ATTACHMENT NO. 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 76-109
May 4, 1976

SUBJECT: Availability of Official Information for Public Disclosure

ORIGINATING AGENCY: Executive Secretary, D. C.

By virtue of the authority vested in me by Public Law 93-198, it is hereby ordered that:

Commissioner's Order No. 299.207/1 of December 27, 1935, as amended by Order of the Commissioner No. 68-211 of March 19, 1968, as amended by Order No. 71-370 of November 2, 1971, is hereby repealed. The following policies shall govern the availability for disclosure by agencies of the Government of the District of Columbia of official information and records requested by the general public.

Sec. 1. Definitions. For the purposes of this Order, the following definitions shall apply:

- (a) "Agency means an office, department, division, board, commission, or other entity of the Government of the District of Columbia under the administrative authority of the Mayor of the District of Columbia.
- (b) "Available" means keeping the record or a duplicate thereof open for inspection and copying during the normal business hours of the agency.
- (c) "Categorical request" means any request for all records falling within a reasonably specific category which conforms to the definition of "identified records."
- (d) "Identified records" mean any reasonably specific description of the records sought which will enable an agency employee to locate the requested records and would include the general subject matter of the records, and the title and dates of the records, if known.

ATTACHMENT NO. 1

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- (e) "Person" means any member of the general public, besides persons legally authorized by other than this Order, whether an individual, partnership, association, corporation, or public or private organization.
- (f) "Public disclosure" means available to any member of the general public besides persons legally authorized by other than this Order.
- (g) "Records" means any books, papers, maps, photographs or other documentary material, regardless of physical form or characteristics, made or received by an agency of the Government of the District of Columbia in connection with the transaction of public business, and preserved or appropriate for preservation by that agency or its successor as evidence of its organization, functions, decisions, policies, procedures, operations, or other activities of the District Government or because of the informational value of data contained therein. However, the term shall not include the compiling or processing of a record not in existence, or not in the possession or control of the agency, nor shall it include objects or articles such as tangible exhibits, models, and other structures or equipment.

Sec. 2(a) General Availability of Government Records. Upon written request by any person for identified records, the agency of the District Government to which the request is directed shall, not later than within ten working days, make such records available. Should the agency require additional time to produce the records, it shall acknowledge the request in writing within such ten-day period, stating therein the reason for the delay and indicating the date on which the records shall be available. Grounds for delay beyond the ten-day period are: the requested records are stored in whole or part at locations other than the office having charge of the records; the request requires the collection of a substantial number of specified records; the requested records have not been located in the course of a routine search and additional efforts are required to locate them; the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure by section (3) (a) of this Order, or can be revealed only with appropriate deletions as provided for under section (3) (a).

- (b) If the records requested are unavailable for disclosure under one of the categories of Section (3) (a), the agency may deny the request, but in such case it shall provide a written denial to the person requesting the records within ten working days, stating the reason for the denial and shall inform such person of the review procedures provided by section 5 of this Order. The knowledge and responsibility of the head of the agency denying the request shall be implied in every written denial. Each agency of the District Government shall maintain a file of all letters of denial of that agency which shall be made available on request.

Sec. 3. Records which may be withheld from Public Disclosure.

- (a) The following records may be withheld from public disclosure:
- (1) records specifically exempted from disclosure by law;
 - (2) records in files whose release would result in a clearly unwarranted invasion of personal privacy, except when identifying references, such as names and addresses, are deleted;
 - (3) records in investigatory and inspection files compiled for law enforcement purposes, except to the extent available by law to a party other than an agency;
 - (4) records of commercial or financial information obtained from a person under an agreement of confidentiality; and
 - (5) records of inter-agency or intra-agency communications which would not be available by law to a party other than an agency in litigation with the agency, except all guidelines, instructions or procedures issued to governmental personnel for the administration of any public law, regulation or Order shall not be considered inter-agency or intra-agency communications under this Order.
 - (6) Reports and memoranda of consultants or independent contractors, except to the extent they would be required to be disclosed if prepared by the agency.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

- (b) Any of the records listed in subsection (a), except for records listed in paragraph (1), may be made available by the agency or reviewing body if said agency or reviewing body determines that no unreasonable interference with personal privacy or effective governmental operations shall result. Nothing in this Order shall authorize the withholding of information or limit the availability of records to members of Congress, the Council of the District of Columbia, or to any legally authorized governmental agency or person.

Sec. 4 Public Information Review Board.

- (a) A Public Information Review Board is hereby established to administer and supervise this Order and to review delays and denials of information by agencies involved. The Review Board shall be comprised of the following members: (1) the Public Affairs Officer of the District of Columbia or his representative, (2) the Director of the Municipal Planning Office or his representative, (3) the Executive Secretary or his representative, and (4) two representatives appointed by the Mayor of the District of Columbia who shall represent the public.

ATTACHMENT NO. 1

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The public representatives may not be employees of the District of Columbia Government and shall serve a three-year term of office. The Chairman and Vice Chairman shall be designated by the Mayor.

- (b) The Executive Secretary of the District of Columbia shall furnish staff assistance to the Board. Three members of the Review Board shall constitute a quorum.
- (c) The Review Board shall have the following powers and responsibilities:
 - (1) to review all appeals from denials of access to agency records; and
 - (2) to review all complaints about violations of time limits set out in section 2 of this Order. If the Review Board finds the complaint justified, it shall order the agency to supply the records or to issue an official denial immediately. A report of the failure or refusal of an agency to comply with an order of the Review Board shall be forwarded to the Commissioner for appropriate action.
 - (3) The Board, its Chairman, or any of its members, is authorized to conduct informal meetings between agency representatives and persons appealing from denials of access to agency records for purposes of conciliation of reaching voluntary accords between the persons concerned.

Sec. 5 Review of Denials of Public Access to Government Records. Any person denied access to Government records by an agency may appeal within thirty (30) days of such denial, by filing an original and four copies of a request for review, in writing, with the Executive Secretary, who shall immediately notify the Board members of the appeal.

- (a) The appeal shall state in writing the grounds for the appeal, including supporting statements or arguments, and a copy of the agency's letter of denial. An additional copy of the appeal shall be filed with the agency that denied the request. The agency shall transmit to the Board within five (5) working days copies of all correspondence and documents pertinent to the appeal.

The Board shall be convened within twenty working days from the time a written appeal is received by the Executive Secretary.

- (b) The Board is authorized to review the facts and rationale behind the agency action, including review of the records in question, and shall determine whether the agency decision represents a proper interpretation and application of this Order. The review shall be conducted upon the written record. Hearings may be granted in the discretion of the Board or its Chairman, for purposes of oral argument. Persons granted oral argument may submit written summaries thereof or briefs but no transcript need be made.

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- (c) If the Board, after its review, determines that the agency in question improperly interpreted or applied provisions of this Order, the Board may issue a directive to the agency ordering it to make available the records in question. The decision of the Review Board shall be sent in writing to the person making the appeal within ten days after the Board convenes to consider the appeal. A copy of all decisions of the Review Board shall be kept on file by the Executive Secretary and shall be available to any person on request.

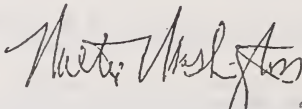
Sec. 6. Search and Duplication Fees and Method of Payment.

- (a) The following specific fees shall be applicable with respect to services rendered to persons pursuant to this order:
- (1) Searching for records, per quarter hour, after 1st hour, by clerical personnel..... \$1.00
 - (2) Nonroutine searching, per quarter hour, by supervisory personnel..... 2.50
 - (3) Copies made by photostat or otherwise (per page). (Maximum of 2 copies will be provided)..... .10
 - (4) Duplication of architectural or engineering photostats and drawings (per page)..... .40
- (b) When no specific fee has been established for a service, for example, when the search involves computer time or special travel, transportation, or communications costs, the head of the agency is authorized to determine the direct costs of the service and include such costs in the fees chargeable under this section.
- (c) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases an advance deposit may be required. The requester is at any time welcome to confer with knowledgeable agency personnel in an attempt to formulate the request in a manner which will reduce the fees and meet the needs of the requester. A request will not be deemed to have been received until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.
- (d) A charge of \$1.00 shall be made for each certification of true copies of agency records.
- (e) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts or if the agency determines that a record which has been requested but

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which is exempt from disclosure under this part is to be withheld.

- (f) Fees must be paid in full prior to issuance of requested copies.
 - (g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order or the D.C. Treasurer and mailed or otherwise delivered to the head of the agency. The agency will assume responsibility for cash which is lost in the mail.
 - (h) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.
 - (i) The head of the agency or an officer designated by him may waive all or part of any fee provided for in this section when such officer deems it to be in either the agency's interest or in the general public's interest.
- Sec. 7. Effective Date. The provisions of this Order shall take effect May 4, 1976.



WALTER E. WASHINGTON
Mayor

ATTACHMENT NO. 2

Council of the District of Columbia

Notice of Public Hearing

City Hall, 14th and E Streets, N.W. 20004 Fifth Floor 638-2223 or Government Code 137-3806

November 6, 1975

PUBLIC HEARINGS ON THE FREEDOM OF INFORMATION ACT OF 1975 AND THE PRIVACY ACT OF 1975

Wednesday, January 28, 1976
10:00 a.m., 2:00 p.m., and 7:30 p.m.
Council Chambers
Room 500, District Building

David A. Clarke, Chairperson of the Committee on the Judiciary and Criminal Law of the Council of the District of Columbia, announces public hearings on Bill No. 1-119, the "Freedom of Information act" and on Bill 1-152, the "Privacy act of 1975". Provisions of the "Freedom of Information act" include (1) a right of access to Public Records from the Mayor and Agencies with exemption for materials relating to (a) trade secrets, (b) information the release of which would constitute an invasion of personal privacy, (c) records of investigation relating to law enforcement; (2) judicial review of denial of access to information by the Mayor or an Agency; and (3) penalties for violation of the act. The "Privacy act of 1975" seeks to permit individuals to ascertain what records pertaining to him or her are collected and used by District of Columbia agencies; to permit individuals to prevent agencies from disclosing information to other individuals or agencies for purposes other than those for which the information was collected; to allow individuals to gain access to records kept about them and to amend or change such records; and to assure that agencies of the District of Columbia collect personal information regarding individuals only for lawful and necessary purposes, and use such information only for lawful and intended purposes. The act would establish requirements for agencies that maintain systems of records and would require that agencies promulgate rules and procedures to guarantee access to systems of records.

The hearings will be held at 10:00 a.m., 2:00 p.m., and 7:30 p.m., Wednesday, January 28, 1976 in the Council Chamber, Room 500, District Building, 14th & E Streets, N.W., Washington, D.C. 20004.

(over)

ATTACHMENT NO. 2

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Persons wishing to testify should register to do so by 5:00 p.m., Tuesday, January 27, 1976, by calling Mrs. Betty Mitchell at 638-2223 or 629-3806, or Peter Boyer at 629-2398. Witnesses will generally be limited to five minutes of oral presentation in order to permit every interested person an opportunity to testify. Written statements are encouraged and will be made a part of the record regardless of length. All statements should be submitted to Mr. Robert Williams, Secretary of the Council, Room 509, District Building, 14th & E Streets, N.W., Washington, D.C. 20004.

Persons testifying are reminded of the provisions of Title V of P.L. 93-376, D.C. Code §§1-1171 to 1180 (Supp. II-1975), the District of Columbia Campaign Finance Reform and Conflict of Interest Act, regarding disclosure of potential conflicts of interest and lobbying.

Copies of Bill No. 1-119 and Bill No. 1-152 are available from Ms. Valerie Barry or Ms. Rachel Clay in the Council's Legislative Services Unit, 638-2223 or 629-3806, Room 219, District Building, 14th & E Streets, N.W., Washington, D.C. 20004.

ATTACHMENT NO. 2

COMMITTEE ON THE JUDICIARY AND CRIMINAL LAW

Public Hearings on Bills 1-119 & 1-152

Provisions of the "Freedom of Information act" include (1) a right to access to Public Records from the Mayor and Agencies with exemption for materials relating to (a) trade secrets, (b) information the release of which would constitute an invasion of personal privacy, (c) records of investigation relating to law enforcement; (2) judicial review of denial of access to information by the Mayor or an Agency; and (3) penalties for violation of the act. The "Privacy act of 1975" seeks to permit individuals to ascertain what records pertaining to him or her are collected and used by District of Columbia agencies; to permit individuals to prevent agencies from disclosing information to other individuals or agencies for purposes other than those for which the information was collected; to allow individuals to gain access to records kept about them and to amend or change such records; and to assure that agencies of the District of Columbia collect personal information regarding individuals only for lawful and necessary purposes, and use such information only for lawful and intended purposes. The act would establish requirements for agencies that maintain systems of records and would require that agencies promulgate rules and procedures to guarantee access to systems of records.

Room 500, District Building
Washington, D. C. 20004
January 28, 1976

I. OPENING STATEMENTS

Chairpersen David A. Clarke
Councilmember Arrington Dixon

II. WEDNESDAY, JANUARY 28, 1976 -- 10 a.m. SESSIONWITNESS LIST

| <u>Name</u> | <u>Organization</u> |
|------------------------------|--------------------------------------|
| 1. Benny L. Kass, Esq. | |
| 2. Jim Heller/Marilyn Welles | ACLU |
| 3. Bob Fisher | D. C. Public Interest Research Group |

ATTACHMENT NO. 2

- 2 -

WEDNESDAY, JANUARY 28, 1976 -- 2:00 p.m. SESSION

| <u>Name</u> | <u>Organization</u> |
|---------------------------|--|
| 1. William Robinson, Esq. | Corporation Counsel |
| 2. Larry Ellsworth, Esq. | D. C. Bar Committee on Access to Government Information |
| 3. John T. O'Neill | Apartment and Office Building Assn. |

7:30 p.m. SESSION

| <u>Name</u> | <u>Organization</u> |
|--------------------|----------------------------------|
| 1. Ted Prahinski | Citizen |
| 2. Maureen Limpert | Common Cause |
| 3. William Garetz | Common Cause |
| 4. Richard N. Wolf | Capitol Hill Restoration Society |

SUMMARY OF DC PIRG RESEARCH

ATTACHMENT NO. 3

| Request Type | No. of Requests | Satisfactory responses | Unsatisfactory responses | Unsatisfactory Responses Classification | | | | | | | | No Responses |
|--------------|-----------------|------------------------|--------------------------|---|--|-----------------------------|--------------------------|---|---|---|-------------|--------------|
| | | | | Response late No delay | Response in- complete. No delay. | Unsatisfactory referrals | Unsatisfactory Delays | | | | | |
| | | | | | | | No | A | C | E | | |
| | | | | | | | | | | | | |
| W | 34 | 10 29.4% | 9 26.5% | 5 | 1 | 2 | 1 | 0 | 0 | 1 | 15 44.1% | |
| S | 51 | 16 31.4% | 14 27.5% | 8 | 5 | 2 | 3 | 1 | 0 | 3 | 21 41.1% | |
| Total | 85 | 26 30.6% | 23 27.1% | 13 | 6 | 4 | 4 | 1 | 0 | 4 | 36 42.3% | |

KEY

W - request did not refer to 71-370
S - request did refer to 71-370

Delays

A - response of letter containing delay late
C - No reason for the delay
E - No date at which information available

[ATTACHMENT No. 4]

STATEMENT OF WILLIAM A. ROBINSON, ASSISTANT CORPORATION COUNSEL, DISTRICT OF COLUMBIA, BEFORE THE JUDICIARY AND CRIMINAL LAW COMMITTEE, COUNCIL OF THE DISTRICT OF COLUMBIA, ON BILL 1-119.

JANUARY 28, 1976.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I am pleased to appear before the Committee today to testify on Bill No. 1-119, a bill which, among other things, would create a freedom of information act for the District of Columbia.

We have certain reservations with respect to the bill's provisions, not because of the purpose of the bill to require reasonable disclosure of information regarding the affairs of government and official acts of the elected and appointed officers and employees of the District of Columbia government, but because the bill fails to include many of the significant exemptions provided in the Federal Freedom of Information Act and in Commissioner's Order No. 71-370, which is a type of freedom of information act under which the District government has been operating since late 1971.

For instance, Commissioner's Order No. 71-370 exempts from public disclosure "records specifically exempted from disclosure from law." Thus, if the proposed bill were enacted in its present form, juvenile records now exempt from public disclosure under the provisions of D.C. Code, § 16-2334, would be subject to release as public information. This would defeat the existing salutary purpose of confidentiality of these records to aid in the social rehabilitation of juveniles who have been enticed into the commission of crimes.

The proposed bill contains no provision exempting from public disclosure "investigatory records compiled for law enforcement purposes," such as that now contained in the Federal Freedom of Information Act. Section 5(A)(3) of the proposed bill is overly broad in its inclusion of "investigative" records, and would limit nondisclosure of the information and would harm the agency." No consideration appears to have been given to whether the divulged information may be harmful to the individual. We would recommend that the provisions contained in the Federal law be followed in this respect.

Bill 1-119 fails to specify that requests for public information may be denied where the requests are so unspecific as to burden the government agency involved in compliance with the request. Lack of such specificity could result in private individuals, groups, or organizations conducting massive fishing expeditions for government information which may or may not be relevant. The cost of conducting such record searches and the burden of providing copies to those seeking such information, whether the information could serve a reasonable or useful need or not, could amount to thousands of dollars and hundreds of man hours.

It could serve a very useful purpose to the District if the present bill were modeled more closely after the Federal provisions governing freedom of information. Many courts have already construed the provisions of the Federal Act and thereby given a clarifying definition of its requirements. Such court precedents would serve as a useful guide in interpreting and construing such an act, if it were adopted for the District.

A clear conflict of interest is apparent in section 7(a) of the bill in that it authorizes the Corporation Counsel to bring suit against any District agency which fails to release any record or document which he determines to be withheld contrary to the provisions of the bill. As a result of this provision, the Corporation Counsel would be faced with the very real possibility of having to go into court to sue either the Mayor, an executive agency, or the Council of the District of Columbia to force them to release the withheld information and, in the same case, defending the action as legal representative of the Mayor or agency.

Section 7(c) of Bill 1-119 requires the courts of the District of Columbia to give precedence on their dockets to suits brought to enforce the provisions of this bill. While a similar provision is contained in the Federal law, it would appear that section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act, which proscribes the Council from enacting any act relating to the organization or jurisdiction of the judicial system in the District of Columbia, would prevent its inclusion in the bill.

Finally, the proposed bill provides for criminal fines of up to \$1,000 for violations of its provisions, but it is silent with respect to the possibility of administrative or disciplinary sanctions against District employees who violate the provisions of the bill. Such sanctions might be preferable in certain cases to a mere money fine, and would provide greater flexibility to the Executive Branch in enforcement of the bill's provisions.

We have attempted in this brief presentation to highlight some of the more obvious problem areas posed by the bill. In addition to the technical drafting changes which should be made, we suggest that the Committee may also wish to address itself to matters which have been omitted from the bill. For instance, the bill should contain a "definitions" section to define terms which are not defined elsewhere. We believe it would be advisable to provide for some form of administrative review, either by an intra-agency or inter-agency body, of denials of requests for information. Such a review procedure may result in the favorable disposal of many of these requests and obviate the need for court proceedings. The bill should provide authority for the imposition of a fee schedule in order to defray the costs of making available copies of the requested information. Finally, it is our view that a revised bill could serve to increase the scope of information available to the public by bringing the independent agencies of the District within its coverage. The existing disclosure order is limited to those departments and agencies which are directly under the jurisdiction of the Mayor and thus its provisions are not applicable to those independent agencies who are authorized to establish their own operating procedures and policies.

We would be glad to work with the Council and its staff in the preparation of an alternative measure which would provide the safeguards and exemptions we believe necessary and at the same time provide a method for making available pertinent and relevant government information of a public nature.

ENROLLED ORIGINAL

[An act, 1-178]

In the Council of the District of Columbia

November 19, 1976

To create a Freedom of Information Act; to create rights; and for other purposes

Be it enacted by the Council of the District of Columbia, That this act may be cited as the "Freedom of Information Act of 1976".

SEC. 2. The District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) as amended, is further amended by adding to the end thereof the following:

"TITLE II—FREEDOM OF INFORMATION

"PUBLIC POLICY

"SEC. 201. Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

"RIGHT OF ACCESS TO PUBLIC RECORDS; ALLOWABLE COSTS; TIME LIMITS

"SEC. 202. (a) Any person has a right to inspect, and at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by section 204 of this title, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

"(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed 10 dollars for each request. For purposes of this subsection "request" means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review by the Mayor or an agency to determine if such documents are subject to disclosure.

"(c) The Mayor or an agency, upon request reasonably describing any public record, shall within 10 days (except Saturdays, Sundays, and legal holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

“(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, ‘unusual circumstances’ are limited to:

“(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

“(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

“(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 207 of this title to review the deemed denial of the request.

“LETTERS OF DENIAL

“SEC. 203. (a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

“(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 204 of this title relied on as authority for the denial;

“(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

“(3) notification to the requester of any administrative or judicial right to appeal under section 207 of this title.

“(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.

“EXEMPTIONS

“SEC. 204. (a) The following matters may be exempt from disclosure under the provisions of this title:

“(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

“(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

“(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

“(A) interfere with enforcement proceedings,

“(B) deprive a person of a right to a fair trial or an impartial adjudication,

“(C) constitute an unwarranted invasion of personal privacy,

“(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

“(E) disclosure investigative techniques and procedures not generally known outside the government.

“(F) endanger the life or physical safety of law enforcement personnel:

“(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

“(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

“(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute—

“(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

“(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

“(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

“(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

“(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law.

“RECORDING OF FINAL VOTES

“SEC. 205. Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

“INFORMATION WHICH MUST BE MADE PUBLIC

“SEC. 206. Without limiting the meaning of other sections of this title, the following categories of information are specifically made public information:

“(a) the names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

“(b) administrative staff manuals and instructions to staff that affect a member of the public;

“(c) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

“(d) those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

“(e) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

“(f) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

“(g) the minutes of all proceedings of all agencies.

“ADMINISTRATIVE APPEALS AND ENFORCEMENT

“SEC. 207. (a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition:

“(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of section 202, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

“(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

“(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter *de novo*, and may examine the contents of such records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 204 of this title.

“(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

"OVERSIGHT

"SEC. 208. On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceding calendar year. The report shall include:

"(1) The number of determinations made by each agency not to comply with requests for records made to such agency under this title and the reasons for each determination;

"(2) The number of appeals made by persons under Section 207(a) of this title, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

"(3) The names and titles or positions of each person responsible for the denial of records requested under this title, and the number of instances of participation for each such person;

"(4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this title;

"(5) such other information as indicates efforts to administer fully this title; and

"(6) For the prior calendar year, a listing of the total number of cases arising under this title, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 204 of this title was cited as a reason for denial of a request, and the total amount of fees collected under section 202(b) of this act. Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this title.

"DEFINITION

"SEC. 209. For purposes of this title, the terms 'Mayor', 'Council', 'District', 'agency', 'rule', 'rulemaking', 'person', 'party', 'order', 'relief', 'proceeding', 'public record', and 'adjudication' shall have the meaning as provided in section 102 of Title I of this Act."

SEC. 3. The District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), as amended, is further amended by—

(a) renumbering sections 2 through 12 thereof as sections 101 through 111, respectively;

(b) inserting in the title heading "Title I Administrative Procedure" between section 1 of such Act and section 101 (as renumbered);

(c) striking out "Act" wherever it appears in sections 101 through 111 (as renumbered) and inserting in lieu thereof "title";

(d) by adding to the end of section 102 (as renumbered) of such Act the following:

"(18) the term 'public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.

“(19) the term ‘ajudication’ means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.”

(e) by striking “section 7” in section 105 (as renumbered) of such Act and inserting in lieu thereof “section 106”.

REPEALER

SEC. 4. Mayor's Order 76-109, dated May 4, 1976, is hereby repealed.

EFFECTIVE DATE

SEC. 5. This act shall take effect pursuant to the provisions of section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act.

Docket for the Bill 1-119

Considered in Council September 15, 1976

First Vote September 15, 1976

| RECORD OF COUNCIL VOTE | | | | | | | | | | | | | | |
|--|-----|-----|------|------|----------------|-----|-----|------|------|----------------|-----|-----|------|------|
| COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. |
| TUCKER | X | | | | DIXON | X | | | | SPAULDING | | | | X |
| MOORE, D. | | | | X | HARDY | X | | | | WILSON | X | | | |
| BARRY | | | | X | HOBSON | X | | | | WINTER | X | | | |
| CLARKE | X | | | | MOORE, J. | X | | | | | | | | |
| COATES | | | | X | SHACKLETON | X | | | | | | | | |
| X—Indicates Vote A. B.—Absent N. V.—Not Voting | | | | | | | | | | | | | | |

X—Indicates Vote A. B.—Absent N. V.—Not Voting

Robert A. Williams
(Secretary of the Council)

Final Vote in Council October 12, 1976

| RECORD OF COUNCIL VOTE | | | | | | | | | | | | | | |
|--|-----|-----|------|------|----------------|-----|-----|------|------|----------------|-----|-----|------|------|
| COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. |
| TUCKER | X | | | | DIXON | X | | | | SPAULDING | X | | | |
| MOORE, D. | X | | | | HARDY | | | | X | WILSON | X | | | |
| BARRY | X | | | | HOBSON | X | | | | WINTER | X | | | |
| CLARKE | X | | | | MOORE, J. | X | | | | | | | | |
| COATES | X | | | | SHACKLETON | X | | | | | | | | |
| X—Indicates Vote A. B.—Absent N. V.—Not Voting | | | | | | | | | | | | | | |

X—Indicates Vote A. B.—Absent N. V.—Not Voting

Robert A. Williams
(Secretary of the Council)

Presented to the Mayor NOV 5 1976

Robert A. Williams
(Secretary of the Council)

Mayor's Action: ☒

Approved: 19 NOV 1976

Disapproved: _____

Robert A. Williams
(Secretary of the Council)

Robert A. Williams
(Mayor's Signature)

Enacted without Mayor's Signature _____

(Secretary of the Council)

AMENDMENT TO BILL NO. 1-119

I. Amend paragraph (6) of subsection (a) of section 204 of Bill No. 1-119 by adding to the end thereof: (before the period).

(other than this section), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

AMENDMENTS TO BILL NO. 1-119

1. Amend subsection 202(b) by inserting in the last sentence thereof after the word "review" the following: "by the Mayor or an agency".

2. Amend subparagraph (1) of subsection 207(a) of such bill (appearing on p. 13 of the reported bill) by inserting after "If the Mayor denies the petition" the following:

or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of section 202.

3. Amend subparagraph (1) of section 208 of the reported bill (appearing on the top of p. 16 thereof) by striking "Section 4 of".

4. Amend subparagraph (6) of section 208 of the reported bill (appearing on p. 17 thereof) by striking "Section 207 of".

COUNCIL OF THE DISTRICT OF COLUMBIA, COUNCIL PERIOD ONE, SECOND SESSION

FIFTY-FOURTH LEGISLATIVE MEETING, WEDNESDAY, SEPTEMBER 15, 1976

Floor Debate Bill 1-119

Whereupon, the City Council convened at 7:40 p.m., pursuant to notice.

Presiding: Sterling Tucker, chairman.

Councilmembers-at-large: Douglas E. Moore; Marion Barry, Jr.; Julius W. Hobson, Sr.; Jerry A. Moore, Jr.

Ward Councilmembers: David Clarke, Ward 1; John A. Wilson, Ward 2; Polly Shackleton, Ward 3; Arrington Dixon, Ward 4; William Spaulding, Ward 5; Nadine Winter, Ward 6; Willie J. Hardy, Ward 7; James E. Coates, Ward 8.

Mr. TUCKER. We will move now to Agenda Item No. 5, First Reading on Proposed Legislation.

Item 5(a), District of Columbia Freedom of Information Act. That is Bill 1-119, coming out of the Committee on Judiciary & Criminal Law; Chaired by Mr. Clarke.

Mr. CLARKE. Mr. Chairman, I herewith move Bill 1-119. This bill has been introduced by Councilmember Dixon. We hope to see it all the way through its pendency on the Committee of Judiciary & Criminal Law.

It is addressed to the lack of statutory provisions in the laws of the District of Columbia for a right and for a means of the provision of information by the various agencies of this city to those who would seek it. It establishes that right, with certain exceptions and certain delineations and a provided method by which that right might be enforced. Essentially, then that method is the agency upon whom the initial request is made must produce the information within 10 days or under unusual circumstances, 20 days, or issue a denial giving sufficient reason for the failure to produce the information within that period of time. No response whatsoever, constitutes a de facto denial from which the seeker of the information may go directly to Court for redress.

If the information is denied, the seeker has an administrative appeal to the Mayor, and thereafter if the Mayor denies the information or if the Mayor fails to respond to the appeal, then the seeker has regress to the Court.

Mr. Chairman, I move the Bill. I would like to move some amendments.

Mr. TUCKER. The Chair accepts the motion. I recognize Mr. Clarke for purposes of amendments.

Mr. CLARKE. I believe these to be technical amendments. They amend Section 202b.

That is on page three, after the word, "review" That is to clarify that the examination and review is not that of the seeker but that of the Mayor or the agency for which a fee should not be charged.

If you wish, I will move them all together.

Mr. TUCKER. Please.

Mr. CLARKE. Moving to page 13 of the Bill, after it says in 207a, at the bottom of the paragraph, "if the Mayor denies the petition", then it inserts therein the language as set forth in the amendment, the effect of which is to say, if the Mayor denies or does not make a determination or the person was not given a response by these subordinate agencies or independent agency, then they may move to go to Court to enforce their right.

The third amendment goes to page 16. It simply strikes up there on the top line, where it says, "Section 4 of". That provision applies that the Mayor's report shall include the number of determinations made by each agency under the title, not just one section of it. The same effect is engendered by the Fourth Amendment. That goes to page 17. It takes out the designation section, 207, of this title. The listing of the total number of cases would apply to the whole title.

Mr. Chairman, I move the amendments.

Mr. TUCKER. We have a motion before us, is there any discussion?

Rev. J. MOORE. Mr. Chairman, in these two instances, Mr. Clarke, where you suggest amendments, under Item 3 and 4 of your sheet that has the amendment on them, how would it read after you would take out Section 207 and Section 4?

Mr. COATES. On page 16, it would read, "the report shall include the number of determinations made by each agency, not to comply with requests for records made to such agency under the title", instead of "under Section 4 of this Title".

Then on page 17, it would read as follows, "the total number of times in which each exemption provided under this title", instead of one section.

It is just better legislative form.

Mr. TUCKER. Any further discussion?

All those that favor the motion, say aye.

[A chorus of ayes.]

All those that favor the motion, say aye.

[A chorus of ayes.]

Mr. TUCKER. Opposed?

The ayes have it, and it is so ordered.

Mr. CLARK. Mr. Chairman, I move the Bill as amended.

Mr. TUCKER. Any discussion?

As many in favor of the motion, say aye.

[A chorus of ayes.]

Mr. TUCKER. Opposed?

The ayes have it, and it is so ordered.

COUNCIL OF THE DISTRICT OF COLUMBIA, COUNCIL PERIOD ONE, SECOND SESSION

FIFTY-FIFTH LEGISLATIVE SESSION, TUESDAY, OCTOBER 12, 1976

Floor Debate Bill 1-119

Whereupon, the City Council convened at 10:45, pursuant to notice.
Presiding: Sterling Tucker, chairman.

Councilmembers-at-Large: Douglas E. Moore; Marion Barry, Jr.; Julius W. Hobson, Sr.; Jerry A. Moore.

Ward Councilmembers: David Clarke, Ward 1; John A. Wilson, Ward 2; Polly Shackleton, Ward 3; Arrington Dixon, Ward 4; William Spauling, Ward 5; Nadine Winter, Ward 6; Willie J. Hardy, Ward 7; James E. Coates, Ward 8.

We will move now to consideration of Item 4b, District of Columbia Freedom of Information Act. That is Bill 1-119. That is also coming out of the Committee on Judiciary and Criminal Law, as Chaired by Mr. Clarke. This is the second and final reading.

Mr. CLARKE. Mr. Chairman, I will herewith move the Freedom of Information Act and, in support of it, will indicate this Bill was introduced by Arrington Dixon. It has been voted out of the Committee on Judiciary and Criminal Law. It was reported and voted out favorably once by the Council.

The Bill would close a gap in the law. The District of Columbia provides for the availability of information to persons who request it. We discussed how the Bill would operate at the first reading and so we won't go through that again, other than, to say thank you to Mr. Dixon for the hard work that he did on this piece and—we appreciate it and we want to thank his staff that worked diligently with the Committee on Judiciary and Criminal Law throughout the consideration.

As a result of a late letter received from the Committee of the Bar Association dealing with this type of matter, we have an amendment that is before you. Essentially, it will address Section 204, a section of the Bill which is part of the exception that is found on page 6 of the Bill which is before you. This is on line 151. That provision exempts from the disclosure requirement of the Bill information specifically by statute. In the federal experience this was the original language. It is from the original federal Procedures Information Act that they found that it was interpreted too broadly by the Supreme Court of the United States. It is after the Supreme Court of the United States excluded this exception as broadly exempted material from disclosure that the Congress of the United States passed, with respect to the federal law, an amendment very similar to the one that I am proposing before this Council today.

The Executive Branch has indicated that if we are to have a Freedom of Informations Act, it would be good for it to parallel with that so it could provide some basis of construction around it.

In that sphere and in order to have our laws as effective to the District of Columbia citizens as the federal law is for the national citizenry, I am moving this amendment which would provide that the statutes which exempts disclosures must require that such matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Mr. DIXON. I second it.

Mr. TUCKER. The Chair accepts the motion of the Bill.

We now have a motion to move the amendment. It has been seconded.

Is there any discussion on the Amendment?

Rev. D. MOORE. Mr. Chairman, do I understand that Mr. Clarke is substituting a Section No. 6, in Section 204? Does that relate to No. 7?

Mr. CLARKE. No, it relates to Section 204. It does not substitute. It adds to the end of the sentence.

Rev. D. MOORE. On page 6, line 154, I have underlined this section because I had some questions about why this government would be concerned about that particular parallel structure with the Federal law.

Does the Mayor or the Chairman have access to any top secret things that would have an affect on the interest of the Council?

Mr. CLARKE. This does not go to sub-section 7.

Rev. D. MOORE. That is what I asked you. I have no objections to it, but I want to talk about 7.

Mr. TUCKER. The amendment goes to subsection 6. Any further discussion on the amendment? Those who support the amendment, say aye.

[A chorus of ayes.]

Mr. TUCKER. Opposed?

The ayes have it, and it is so ordered.

Are there any further amendments? We are in the amending process.

We have a motion before us. The Chair would entertain a motion on the Bill, as amended.

Mr. CLARKE. Mr. Chairman, I so move.

Mr. TUCKER. We have an amended motion before us. Is there any discussion?

Mr. HOBSON. Mr. Chairman, may I ask you a couple of questions? Is a public information act of any kind in effect, whatsoever, that covers the District of Columbia at this time?

Mr. CLARKE. No sir, the federal law, by a drafting oversight, did not include the District of Columbia. There is existing an Executive Order providing some framework, which has not worked terribly well. There is a statutory requirement. Other than those few sections in the Administrative Procedures Act with respect to—I notice that Council member Moore said by the Mayor.

The Executive Order is a promulgation by the Mayor.

Rev. D. MOORE. Mr. Chairman, under Section 204, No. 7, line 154, I questioned whether or not this is a relevant section for the District of Columbia unless there are some things that the Mayor and our Council Chairman may know that might impede upon the national security of the United States.

Mr. CLARKE. I don't know whether the Mayor and the Chairman know any things that are impending upon the national security of the United States. The though here is that, it is a capitol city. There may be some involvement with respect to the national defense that the city may be in possession of some information about the national defense plan that we would not want to provide a local law requiring the disclosure of such.

Rev. D. MOORE. Well, it seems to me that if it is a question of national defense, that the federal law would take precedence. I do not understand the need.

Mr. CLARKE. I would not want the act to be found invalid because of a conflict in the law.

Rev. D. MOORE. In this act we go to the Superior Court rather than the Court of Appeals. After we go to the Superior Court, that exhausts our administrative rights; is that correct?

Mr. CLARKE. Any action in the Superior Court is not a remedy.

Rev. D. MOORE. But in your bill, does it not say that after that is exhausted, that we cannot appeal? The Mayor ordered that we go directly to the Court of Appeals.

Mr. CLARKE. There is no judicial review in the Mayor's order.

Rev. D. MOORE. We cannot go directly to the Court of Appeals?

Mr. CLARKE. No sir, not under the terms of the Order.

Mr. WILSON. Point of information, Mr. Chairman.

Mr. TUCKER. What is your point, Mr. Wilson?

Mr. WILSON. I don't know if that amendment over that section on line 299 where it says, "the term public record includes all books, papers, maps, photographs, cards, tapes, recording, or other documentary material regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies"—I don't know what that means. The question I have is this, in several areas of our wards, at the present time, through the assistance of the Police Department and community agencies, we are trying to stop a great deal of drug traffic that is going on in our ward. One of

the biggest problems that we have is that when the individuals who are willing to furnish the information that is necessary to carry out a reasonable court case came forth, their houses ended up being fire-bombed and their children mutilated.

I want to know if this provides a means that—I think that we have so many laws, in my opinion, and it may sound strange to some for me to say it—we have very few laws protecting the law abiding citizens.

I want to know if one of these people happens to go to Court, would that person be forced to testify in a Court of Law about information that person may have given according to the trafficking of narcotics in his or her neighborhood? Would he be forced to be identified?

Mr. CLARKE. I am not sure I understand the question. The Bill is addressing nothing with respect to what is compelling in Court. I don't think the Bill would not affect whether that person could be compelled in Court to testify or not. The Bill does address—

Mr. WILSON. No, Mr. Clarke, what I am asking is, does the Police Department have to present those records if the Police Department is sued. Does the Police Department have to present those records with those people being identified in the report?

Mr. TUCKER. Can they protect their source of information, is the question.

Mr. CLARKE. My conclusion is, that they would not, under Section 204-3c, which exempts investigatory records compiled for law enforcement purposes. But this is only to the extent that such records would constitute an unwarranted invasion of privacy. The Courts have always held in those informer cases, that the name of the informant does not have to be disclosed to the defendant. Under the Court procedure, part of the justification is privacy.

I would certainly think that that would lend assistance to the defense of privacy in this particular case.

It would be my conclusion that it would not have to be given.

Mr. TUCKER. Any further discussion, on the motion as amended? As many as favor the motion, say aye.

[A chorus of ayes.]

Mr. TUCKER. Opposed?

The ayes have it, and it is so ordered.

Docket for the Bill 1-119Considered in Council September 15, 1976First Vote September 15, 1976

RECORD OF COUNCIL VOTE

| COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. |
|----------------|-----|-----|------|------|----------------|-----|-----|------|------|----------------|-----|-----|------|------|
| TUCKER | X | | | | DIXON | X | | | | SPAULDING | | | | X |
| MOORE, D. | | | | X | HARDY | X | | | | WILSON | X | | | |
| BARRY | | | | X | HOBSON | X | | | | WINTER | X | | | |
| CLARKE | X | | | | MOORE, J. | X | | | | | | | | |
| COATES | | | | X | SHACKLETON | X | | | | | | | | |

X—Indicates Vote A. B.—Absent N. V.—Not Voting

Robert A. Williams

(Secretary of the Council)

Final Vote in Council October 12, 1976

RECORD OF COUNCIL VOTE

| COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. |
|----------------|-----|-----|------|------|----------------|-----|-----|------|------|----------------|-----|-----|------|------|
| TUCKER | X | | | | DIXON | X | | | | SPAULDING | X | | | |
| MOORE, D. | X | | | | HARDY | | | | X | WILSON | X | | | |
| BARRY | X | | | | HOBSON | X | | | | WINTER | X | | | |
| CLARKE | X | | | | MOORE, J. | X | | | | | | | | |
| COATES | X | | | | SHACKLETON | X | | | | | | | | |

X—Indicates Vote A. B.—Absent N. V.—Not Voting

Robert A. Williams

(Secretary of the Council)

Presented to the Mayor NOV 5 1976

Mayor's Action:

Approved: ✓ 10 NOV 275

Disapproved: _____

Robert A. Williams

(Secretary of the Council)

Harold H. H. H.

(Mayor's Signature)

Enacted without Mayor's Signature _____

(Secretary of the Council)

Bill Docket Bill No. 1-119

Page Two

Reconsidered by Council _____

Vote _____

| RECORD OF COUNCIL VOTE | | | | | | | | | | | | | | |
|--|-----|-----|------|------|----------------|-----|-----|------|------|----------------|-----|-----|------|------|
| COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. |
| TUCKER | | | | | DIXON | | | | | SPAULDING | | | | |
| MOORE, D. | | | | | HARDY | | | | | WILSON | | | | |
| BARRY | | | | | HOBSON | | | | | WINTER | | | | |
| CLARKE | | | | | MOORE, J. | | | | | | | | | |
| COATES | | | | | SHACKLETON | | | | | | | | | |
| X—Indicates Vote A. B.—Absent N. V.—Not Voting | | | | | | | | | | | | | | |

X—Indicates Vote A. B.—Absent N. V.—Not Voting

(Secretary of the Council)

Presented to the President _____

(Secretary of the Council)

Sustain Mayor's Veto _____

Not Sustain Mayor's Veto _____

(President of the U. S.)

Submitted to the Congress JAN 10 1977

(Secretary of the Council)

Senate Action _____

Resolution Number _____

House Action _____

Resolution Number _____

(Secretary of the Senate)

(Clerk of the House)

Enacted without Congressional action _____

(Secretary of the Council)

NOVEMBER 5, 1976.

HON. WALTER E. WASHINGTON,
Mayor of the District of Columbia,
Washington, D.C.

DEAR MAYOR WASHINGTON: Enclosed for your signature is an act adopted by the Council on October 12, 1976, which would create a Freedom of Information Act; to create rights; and for other purposes.

The report of the Council's Committee on the Judiciary and Criminal Law detailing the legislative history of this act is also enclosed for your information.

Sincerely yours,

STERLING TUCKER, Chairman.

THE DISTRICT OF COLUMBIA,
Washington, D.C., November 10, 1976.

HON. STERLING TUCKER,
Chairman, Council of the District of Columbia,
Washington, D.C.

DEAR MR. CHAIRMAN: Today I am approving Bill 1-119, the Freedom of Information Act. My commitment to the basic purposes of this legislation is long standing and most recently reflected in my Executive Order of May 4, 1976.

The legislation I have approved is, however, not without difficulties. A number of agencies have raised questions about the proper interpretation of certain provisions of the bill and I foresee the need to develop appropriate guidelines to carry out the law, including an interpretive opinion from the Corporation Counsel. As experience is gained under the law we may also find it necessary to seek amendments to enable us to carry out the purposes of the law most effectively.

In addition, my staff is working with the Chairman of the Judiciary and Criminal Law Committee to explore the possibility of an appropriate amendment to section 202(b), which establishes a fee ceiling of \$10.00 for searches of records in response to the demands made pursuant to section 202(a). I hope agreement can be reached on an amendment that will address the concerns of the Committee reflected in its report of September 1, 1976 and enable the Government to recover reasonable and legitimate costs for record searches.

Sincerely yours,

WALTER E. WASHINGTON, *Mayor.*

JANUARY 10, 1977.

HON. THOMAS P. O'NEILL, JR.,
Speaker of the House, U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I have the honor to transmit to you, in accordance with Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, a copy of an act adopted by the Council of District of Columbia on October 12, 1976, and signed by the Mayor on November 19, 1976. Act 1-178 will create a Freedom of Information Act; to create rights; and for other purposes.

Attached to the act is a docket sheet for signature of the Clerk of the House by the expiration of the 30-day review period. In the event during this period the House adopts a resolution disapproving such act, please so advise the Council on the docket sheet, noting the resolution number and signature of the House Clerk.

To begin the count of the 30-day review period by Congress, it would be appreciated if your office would acknowledge receipt of this document on the tissue copy attached.

Sincerely yours,

STERLING TUCKER, *Chairman.*

JANUARY 10, 1977.

Hon. NELSON ROCKEFELLER,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I have the honor to transmit to you, in accordance with section 602(c) of the D.C. Self-Government and Governmental Reorganization Act, P.L. 93-198, a copy of an act adopted by the Council of the District of Columbia on October 12, 1976, and signed by the Mayor on November 19, 1976. Act 1-178 will create a Freedom of Information Act; to create rights; and for other purposes.

Attached to the act is a docket sheet for signature of the Secretary of the Senate by the expiration of the 30-day review period. In the event during this period the Senate adopts a resolution disapproving such act, please so advise the Council on the docket sheet, noting that the resolution number and signature of the Senate Secretary.

To begin the count of the 30-day review by Congress, it would be appreciated if your office would acknowledge receipt of this document on the tissue copy attached.

Sincerely yours,

STERLING TUCKER, *Chairman.*

JANUARY 10, 1977.

Hon. THOMAS F. EAGLETON,
Chairman, District of Columbia Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed for your information is a copy of an act adopted by the Council on October 12, 1976, and signed by the Mayor November 19, 1976. Act 1-178 will create a Freedom of Information Act; to create rights; and for other purposes.

A copy of the enclosed act has been transmitted to the President of the Senate.

Sincerely yours,

STERLING TUCKER, *Chairman.*

JANUARY 10, 1977.

Hon. CHARLES C. DIGGS, Jr.,
Chairman, District of Columbia Committee, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed for your information is a copy of an act adopted by the Council on October 12, 1976, and signed by the Mayor November 19, 1976. Act 1-178 will create a Freedom of Information Act; to create rights; and for other purposes.

A copy of the enclosed act has been transmitted to the Speaker of the House.

Sincerely yours,

STERLING TUCKER, *Chairman.*

[District of Columbia Law 1-96]

In the Council of the District of Columbia

March 29, 1977

To create a Freedom of Information Act; to create rights; and for other purposes

Be it enacted by the Council of the District of Columbia, That this act may be cited as the "Freedom of Information Act of 1976".

SEC. 2. The District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) as amended, is further amended by adding to the end thereof the following:

"TITLE II—FREEDOM OF INFORMATION

"PUBLIC POLICY

"SEC. 201. Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

"RIGHT OF ACCESS TO PUBLIC RECORDS; ALLOWABLE COSTS; TIME LIMITS

"SEC. 202. (a) Any person has a right to inspect, and at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by section 204 of this title, in accordance with reasonable rules that shall be issued by the Mayor or any agency after notice and comment, concerning the time and place of access.

"(b) The Mayor or any agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed 10 dollars for each request. For purposes of this subsection "request" means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review by the Mayor or an agency to determine if such documents are subject to disclosure.

"(c) The Mayor or an agency, upon request reasonably describing any public record, shall within 10 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

“(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, ‘unusual circumstances’ are limited to:

“(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

“(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

“(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 207 of this title to review the deemed denial of the request.

“LETTERS OF DENIAL

“SEC. 203. (a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

“(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 204 of this title relied on as authority for the denial;

“(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

“(3) notification to the requester of any administrative or judicial right to appeal under section 207 of this title.

“(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.

“EXEMPTIONS

“SEC. 204. (a) The following matters may be exempt from disclosure under the provisions of this title:

“(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

“(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

“(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

“(A) interfere with enforcement proceedings,

“(B) deprive a person of a right to a fair trial or an impartial adjudication,

“(C) constitute an unwarranted invasion of personal privacy,

“(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

“(E) disclose investigative techniques and procedures not generally known outside the government,

“(F) endanger the life or physical safety of law enforcement personnel;

“(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

“(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examination or answers to questions thereon;

“(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute—

“(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

“(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

“(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

“(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

“(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law.

“RECORDING OF FINAL VOTES

“SEC. 205. Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

“INFORMATION WHICH MUST BE MADE PUBLIC

“SEC. 206. Without limiting the meaning of other sections of this title, the following categories of information are specifically made public information:

“(a) the names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

“(b) administrative staff manuals and instructions to staff that affect a member of the public;

“(c) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

“(d) those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

“(e) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

“(f) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

“(g) the minutes of all proceedings of all agencies.

“ADMINISTRATIVE APPEALS AND ENFORCEMENT

“SEC. 207. (a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition:

“(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of section 202, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

“(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

“(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter *de novo*, and may examine the contents of such records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 204 of this title.

“(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

“OVERSIGHT

“SEC. 208. On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceding calendar year. The report shall include:

“(1) The number of determinations made by each agency not to comply with requests for records made to such agency under this title and the reasons for each such determination;

“(2) The number of appeals made by persons under Section 207(a) of this title, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

“(3) The names and titles or positions of each person responsible for the denial of records requested under this title, and the number of instances of participation for each such person;

“(4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this title;

“(5) such other information as indicates efforts to administer fully this title; and

“(6) For the prior calendar year, a listing of the total number of cases arising under this title, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 204 of this title was cited as a reason for denial of a request, and the total amount of fees collected under section 202(b) of this act. Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this title.

“DEFINITION

“SEC. 209. For purposes of this title, the terms ‘Mayor’, ‘Council’, ‘District’, ‘agency’, ‘rule’, ‘rulemaking’, ‘person’, ‘party’, ‘order’, ‘relief’, ‘proceeding’, ‘public record’, and ‘adjudication’ shall have the meaning as provided in section 102 of Title I of this Act.”

SEC. 3. The District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), as amended, is further amended by—

(a) renumbering sections 2 through 12 thereof as sections 101 through 111, respectively;

(b) inserting in the title heading “Title I Administrative Procedure” between section 1 of such Act and section 101 (as renumbered);

(c) striking out “Act” wherever it appears in sections 101 through 111 (as renumbered) and inserting in lieu thereof “title”;

(d) by adding to the end of section 102 (as renumbered) of such Act the following:

“(18) the term ‘public record’ includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.

“(19) the term ‘adjudication’ means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.”

(e) by striking “section 7” in section 105 (as renumbered) of such Act and inserting in lieu thereof “section 106”.

REPEALER

SEC. 4. Mayor’s Order 76-109, dated May 4, 1976, is hereby repealed.

EFFECTIVE DATE

SEC. 5. This act shall take effect pursuant to the provisions of section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act.

[District of Columbia Law 1-96]

Council of the District of Columbia—Notice

March 31, 1977

“FREEDOM OF INFORMATION ACT OF 1976”

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act (PL 93-198), the Act, the Council of the District of Columbia adopted Bill No. 1-119 on first and second readings September 15, 1976, and October 12, 1976, respectively. Following the signature of the Mayor on November 19, 1976, this legislation was assigned Act No. 1-178, published in the December 10, 1976, edition of the *D.C. Register*, and transmitted to both Houses of Congress for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired and, therefore, cites the following legislation as D.C. Law 1-96, effective March 29, 1977.

STERLING TUCKER,
Chairman of the Council.

II. PUBLIC RECORD

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., November 6, 1975.

PUBLIC HEARINGS ON THE FREEDOM OF INFORMATION ACT OF 1975 AND THE PRIVACY ACT OF 1975

David A. Clarke, Chairperson of the Committee on the Judiciary and Criminal Law of the Council of the District of Columbia, announces public hearings on Bill No. 1-119, the "Freedom of Information act" and on Bill 1-152, the "Privacy act of 1975". Provisions of the "Freedom of Information act" include (1) a right of access to Public Records from the Mayor and Agencies with exemption for materials relating to (a) trade secrets, (b) information, the release of which, would constitute an invasion of personal privacy, (c) records of investigation relating to law enforcement; (2) judicial review of denial of access to information by the Mayor or an Agency; and (3) penalties for violation of the act. The "Privacy Act of 1975" seeks to permit individuals to ascertain what records pertaining to him or her are collected and used by District of Columbia agencies; to permit individuals to prevent agencies from disclosing information to other individuals or agencies for purposes other than those for which the information was collected; to allow individuals to gain access to records kept about them and to amend or change such records; and to assure that agencies of the District of Columbia collect personal information regarding individuals only for lawful and necessary purposes, purposes, and use such information only for lawful and intended. The act would establish requirements for agencies that maintain systems of records and would require that agencies promulgate rules and procedures to guarantee access to systems of records.

The hearings will be held at 10:00 a.m., 2:00 p.m., and 7:30 p.m., Wednesday, January 28, 1976 in the Council Chamber, Room 500, District Building, 14th & E Streets, N.W., Washington, D.C. 20004.

Persons wishing to testify should register to do so by 5:00 p.m., Tuesday, January 27, 1976, by calling Mrs. Betty Mitchell at 638-2223 or 629-3806, or Peter Boyer at 629-2398. Witnesses will generally be limited to five minutes of oral presentation in order to permit every interested person an opportunity to testify. Written statements are encouraged and will be made a part of the record regardless of length. All statements should be submitted to Mr. Robert Williams, Secretary of the Council, Room 509, District Building, 14th & E Streets, N.W., Washington, D.C. 20004.

Persons testifying are reminded of the provisions of Title V of P.L. 93-376, D.C. Code §§ 1-1171 to 1180 (Supp. II-1975), the District of Columbia Campaign Finance Reform and Conflict of Interest Act, regarding disclosure of potential conflicts of interest and lobbying.

Copies of Bill No. 1-119 and Bill No. 1-152 are available from Ms. Valerie Barry or Ms. Rachel Clay in the Council's Legislative Services Unit, 638-2223 or 629-3806, Room 219, District Building, 14th & E Streets, N.W., Washington, D.C. 20004.

COMMITTEE ON THE JUDICIARY AND CRIMINAL LAW

PUBLIC HEARINGS ON BILLS 1-119 AND 1-152

Provisions of the "Freedom of Information act" include (1) a right to access to Public Records from the Mayor and Agencies with exemption for materials relating to (a) trade secrets, (b) information, the release of which, would constitute an invasion of personal privacy, (c) records of investigation relating to law enforcement; (2) judicial review of denial of access to information by the Mayor or an Agency; and (3) penalties for violation of the act. The "Privacy act of 1975" seeks to permit individuals to ascertain what records pertaining to him or her are collected and used by District of Columbia agencies; to permit individuals to prevent agencies from disclosing information to other individuals or agencies for purposes other than those for which the information was collected; to allow individuals to gain access to records kept about them and to amend or change such records; and to assure that agencies of the District of Columbia collect personal information regarding individuals only for lawful and necessary purposes, and use such information only for lawful and intended purposes. The act would establish requirements for agencies that maintain systems of records and would require that agencies promulgate rules and procedures to guarantee access to systems of records.

I. Opening statements: Chairperson David A. Clarke, Councilmember Arrington Dixon.

II. Wednesday, January 28, 1976—10 a.m. session: Witness list: Benny L. Kass, Esq.; Jim Heller/Marilyn Welles, ACLU; Bob Fisher, D.C. Public Interest Research Group.

Wednesday, January 28, 1976—2:00 p.m. session: William Robinson, Esq., Corporation Counsel; Larry Ellsworth, Esq., D.C. Bar Committee on Access to Government Information; John T. O'Neill, Apartment and Office Building Assn.

7:30 p.m. session: Ted Prahinski, Citizen; Maureen Limpert, Common Cause; William Garetz, Common Cause; Richard N. Wolf, Capitol Hill Restoration Society.

JANUARY 28, 1976.

COMMENTS OF THE AMERICAN CIVIL LIBERTIES UNION OF THE NATIONAL CAPITAL AREA ON D.C. COUNCIL BILL NO. 1-119, A PROPOSED FREEDOM OF INFORMATION ACT

Bill No. 1-119 would amend the District of Columbia Administrative Procedure Act to provide freedom of information provisions comparable to the provisions in section 3 of the Federal Administrative Procedure Act. These would insure the public's ability to get information from the D.C. Government, subject to certain excep-

tions for trade secrets, for information which would needlessly endanger personal privacy if disclosed to the public, and for law enforcement agency records whose disclosure would harm the agency in one of six specified ways.

The American Civil Liberties Union of the National Capital Area (ACLU-NCA) warmly endorses the basic principles and approach of Bill No. 1-119 and urges its early passage. While ACLU-NCA recommends that the bill should be modified in certain respects which are summarized hereafter, it believes that bill No. 1-119 is a fine proposal which will do a great deal to open the records of District Government to the citizens of the District of Columbia and thereby make this a more democratically governed city. Freedom of information is an indispensable handmaiden of intelligent self-government. Unless the citizens know what the government is doing and why, they are not able to cast their votes in an informed manner. The consent of the governed can only be meaningful if it is knowing consent.

Moreover, we think that Bill No. 1-119 sensibly departs from the federal Freedom of Information Act after which it is modelled in respects which importantly distinguish the District of Columbia from the federal Government. Specifically, we believe that the exceptions to public disclosure should be much more limited in the case of a municipal government which has no national security or foreign affairs functions, and Bill No. 1-119 takes that approach too.

The most important feature of the bill, as we see it, is the fact that its enactment would supplant Commissioner's Order No. 71-370 and thus remove this important area of freedom of information from executive discretion and place it under rules which only this Council could modify or supersede. It is an age-old truth that the executive branch of government only grudgingly reveals to its citizens information about itself which might be embarrassing. To paraphrase Clemenceau, executive disclosure is too important to be left to the executives.

In other respects, we think that Bill No. 1-119 is a substantial improvement over Commissioner's Order No. 71-370. It takes a more generous approach to the disclosure of information than does the present order. Moreover, it includes certain non-executive agencies which are not presently covered by the Commissioner's Order. Further, it declares that certain types of information *must* be made public and thus avoids a certain amount of dispute as well as establishing that some things are inherently available to the general public without a request having to be made for their disclosure. Finally, the bill would eliminate the Public Information Review Board which is established under the Commissioner's Order and which appears to us merely to be an administrative obstacle to securing judicial compulsion when information that ought to be made available to a citizen is withheld by the Government.

With these general comments, we do have certain specific suggestions to make which we believe would strengthen the bill. First, we believe that section 4(A) of the bill should be amended to require that within 90 days after its enactment the Mayor establish rules applicable to all executive agencies governing the time, place and manner of access to information. In the absence of such uniform rules, we fear that various agencies will adopt their own rules with inconsistencies and

differences which are inexplicable and confusing to citizens. There ought to be one set of procedures for securing information from all D.C. government agencies.

Secondly, we believe that section 4 should also be amended to require that each agency designate a specific official who is responsible for complying with the Act. That is the federal model and it again helps to eliminate confusion and expedite citizen access to information.

Thirdly, we believe some amendments should be made to section 5, which establishes certain exemptions or exceptions from compelled disclosure of information. Thus, we believe that the second exception, in section 5(A)(2) should be amended to parallel the present provisions of Commissioner's Order No. 71-370 which limits the exceptions for personal privacy to those cases where the deletion of "identifying references such as names and addresses" won't suffice to protect personal privacy. If the deletion of such references will suffice, then there should be no reason not to disclose the balance of the information.

We think the exception to disclosure provided in subparagraph c of section 5(A)(3) is questionable altogether. We cannot understand any ground for withholding information simply because it might disclose "investigatory techniques not otherwise known outside the government." We have had altogether too much of recent disclosures of dubious law enforcement techniques. It is now known that the Metropolitan Police Department has engaged in extremely questionable, if not offensive, intelligence tactics within the past decade. There can be no justifiable reason for withholding from the general population information regarding such techniques. Other subparagraphs of section 5(A)(3) protect specific investigations from premature disclosure, but this subparagraph protects "*techniques*" as such. That is indefensible, particularly in light of what we now know about the uncontrolled conduct of law enforcement authorities in this country in recent years.

We suggest two additional exceptions to disclosure which reinforce personal privacy of citizens. One of these has to do with arrest records which are now governed by the so-called Duncan Ordinance adopted by the old Board of Commissioners in 1967. There is a tendency on the part of law enforcement agencies to erode the privacy guaranteed by that Ordinance.¹ Bill No. 1-119 should be amended to make explicit the fact that the privacy of arrest records under the Duncan Ordinance or any future modification of that ordinance will not be altered as a result of the bill's enactment. It is precisely because there has been a tendency to seize upon excuses for disclosing arrest records to other law enforcement agencies, unbeknownst to the arrestee, that we believe this exception should be made explicit.

Secondly, with greater diffidence we suggest that the Council might want to consider a further exception for information secured from citizens and given to the government under an express promise of confidential treatment. It has been traditionally true that certain agencies of the government need to give such promises in order to obtain accurate statistical information and truthful responses to requests for information which they need for the performance of their function.

¹ See *Utz v. Cullinane*, decided by the United States Court of Appeals for the District of Columbia Circuit on Oct. 3, 1975.

On the other hand, we recognize that such promises can be too freely given and that government questionnaires and surveys can become a plaque to citizens. If such an exception is added to the bill, we believe the Council should periodically review the manner in which it is used.

As stated above, the ACLU-NCA warmly applauds section 6 of the bill which specifies certain categories of information that must be made public in all instances. That is a great improvement. However, the second subparagraph of section 6 contains confusing and needless qualifying language that could be seized upon by some executive officials as a basis for withholding administrative staff manuals and staff instructions from public disclosure. That paragraph only requires the disclosure of administrative staff manuals and instructions to staff "that affect a member of the public." All such manuals and instructions inevitably affect the public. The manner in which government is run and the rules of bureaucracy are inherently important to all of us. We believe that the qualifying language should be deleted so that there can be no question about the fact that all staff manuals and instructions are in the public domain.

In addition to containing serious drafting problems, section 7(A) of the bill seems to be an unrealistic, negative provision. It provides that a person who is denied the right to inspect a public record "may" petition the Corporation Counsel to review the public record to determine if it may be withheld from public inspection. If the Corporation Counsel decides that it cannot be withheld, then he is required to bring suit in the name of the District of Columbia to enjoin the agency from withholding the records.

Since the Corporation Counsel is unquestionably the lawyer for the executive branch of the District of Columbia, he is placed in an intolerable position if he determines that the agency should not withhold the record. He must then sue his own client agency which must then in turn secure outside counsel to defend it. All this will cost money, whereas if the Corporation Counsel believed that the records should be disclosed, he would probably so advise the agency if and when it was sued by the citizen.

On the other hand, it is almost certain that the Corporation Counsel will not normally give the citizen the opinion that is sought, being aware that he must defend the agency in court if the citizen goes to court. Therefore, the citizen is confronted with a needless administrative procedure which courts are likely to require that he or she exhaust before filing the suit, and the Corporation Counsel review which is virtually certain to end in a negative result for the citizen, will simply be substituted for the Public Information Review Board established under the present Commissioner's Order. In other words, it will simply become one more administrative obstacle and delaying point before securing judicial review of a refusal to disclose information. It should be noted that the Corporation Counsel is not put under any time limit to respond to the citizen's request so that the delay could become exceedingly long while the Corporation Counsel decides how to deal with a ticklish situation or else prepares to defend the agency after he has given the citizen a negative opinion.

Section 8 of the bill is likewise one which we oppose. We believe that it is wrong to subject public officials to criminal punishment because they make a mistake in judgment in refusing to disclose information.

The remedy for intransigence is administrative discipline, including firing if necessary. However, to subject a public official to criminal penalties simply because he or she makes a wrong guess about what is required to be disclosed to an inquiring citizen is a Draconian kind of proposal that has no constructive purpose. We suggest that the draftsman of the bill was expressing a common impatience with bureaucratic refusals to disclose information, but there are other ways to skin that cat.

In sum, ACLU-NCA believes that Bill No. 1-119 is an important measure, one of the most important that the Council will take up in the area of civil liberties during its current session. It is important foremost because it establishes Council supremacy over the question of executive disclosure of information to the public. It is also important because it greatly liberalizes the areas of disclosure and spells out certain types of information which must be disclosed in all cases. While the bill has some drafting problems and in certain areas should be broadened to insure both guarantees of personal privacy and larger disclosures to the public, we hope that the Committee on the Judiciary and Criminal Law will take up the bill and with some modifications such as we have recommended, will recommend its passage. And then we hope that the Council will indeed adopt it at an early date.

JANUARY 28, 1976.

TESTIMONY OF BOB FISHER AND SUKI PARKS ON BEHALF OF THE D.C.
PUBLIC INTEREST RESEARCH GROUP BEFORE THE COMMITTEE ON THE
JUDICIARY AND CRIMINAL LAW OF THE D.C. CITY COUNCIL

Good morning, members of the Committee on the Judiciary and Criminal Law and the staff. My name is Suki Parks, I am coordinator of D.C. Public Interest Research Group's (PIRG) Freedom of Information Project, along with Bob Fisher, who is chairperson of the D.C. PIRG Board of Directors. We are here to testify in support of a legislative measure that will facilitate public access to government information in the District of Columbia.

Although we are here to discuss the proposed D.C. Freedom of Information Act, Bill 1-119 in particular, I would like to take a few seconds to comment on the broader issue of public access to government information. Without complete and timely access to information, citizens cannot know if government is truly best protecting and promoting their interests and a government for, by, and of the people becomes an impossibility. A clear correlate to a free flow of information from the government to its citizens, is an open and responsible manner of operation. To quote James Madison: "A popular government without public information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own governors must aim themselves with the power knowledge gives".

For the past ten months, D.C. PIRG has been conducting research on the effectiveness of the present law, which governs public access to government information, Commissioner's Order 71-370, issued November 1971. Our research consisted of requests in two formats: 1) those that had references to the Commissioner's Order and 2) those that did not have the Order reference.

Our research indicates that only 30% of our requests were answered in compliance with the Law, but 42% of our requests were never even answered. There is obviously a critical need for a more effective law. Unfortunately, 1-119 though a good start, needs some major revisions.

In light of our research we would like to focus on four major issue areas. These are as follows:

- (1) Inclusion of Legislative and Judicial Branches;
- (2) Fee structures, delay and denial procedure requirements;
- (3) The review and appeal process;
- (4) The implementation and administration of the law.

INCLUSION OF LEGISLATIVE AND JUDICIAL BRANCHES

Sec. 2 of Bill 1-119 clearly states the public policy of the District to be that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. PIRG endorses such a well stated policy that entitles all persons, not just residents or taxpayers to complete information. But we are unpleased at the unfortunate contradiction that follows in Sec. 3(A) which changes the intent of this well stated public policy, to apply only to the "public record" of the mayor and the executive agencies. This was similarly written into the Commissioner's Order 71-730, and in our opinion needs to be changed.

Government is more than just the executive; both the legislative and judicial branches are daily participants in making decisions that affect the life of the citizens of Washington, D.C. Several other states have Freedom of Information laws covering their legislative branches and one state has recently passed a law which includes the judiciary. We urge the committee to include the other two-thirds of the government in this very important legislation, by broadening the definition of "public record" in Sec. 3(A) to include documents prepared, owned, used, in the possession of, or retained by the legislative and judicial branches, as well as the executive branch.

If, however, this committee decides not to include the legislative and judicial branches, PIRG recommends that the policy statement of Sec. 2 be changed to reflect the true intent of the bill, from "the affairs of the government" to "the affairs of the executive branch only".

FEE STRUCTURES

PIRG applauds the inclusion of Sec. 4(B) allowing the Mayor or an agency to establish and collect fees not to exceed the actual cost of searching for and making copies, and suggesting that the fee be waived or reduced by the Mayor or agency if the request is in the public interest.

Our research into the effectiveness of Commissioner's Order 71-370 revealed that the requirement for each agency to publish the fee structure pursuant to Sec. 2(C) of the Order has not been followed. We believe that for proper implementation, it is extremely important that a fee structure be published and it is our suggestion that this fee structure be made uniform for all agencies. The uniform published fee structure would mean that all requestors of information can be aware of any and all fees in advance, and also prevent any of the agencies from overcharging.

To aid those citizens wishing to make requests in person, we recommend that these fee schedules be posted, in plain view, in all District agencies.

PROCEDURES FOR RESPONSE

Section 4(C) of Bill 1-119 allows the Mayor or an agency fifteen working days from the date of receipt of a request, to notify the requestor of its determination and the reasons therefore. Even though we question the necessity of extending the time period for response from then to fifteen days, we have no quarrels with the longer time period, if it is properly lived up to.

What *does* really concern us are the lack of any procedures for responses, in cases of delay or denial.

Delay: Unlike Sec. 2(A) of the Order, the proposed regulation does not contain provisions for information requests that are delayed. The Order is quite specific in requiring the notice of delay to include the reasons for delay and the date when the records would be made available. In addition to requiring acknowledgment of any written request within ten working days, the Order also clearly states the grounds an agency may justifiably use for delay. The inclusion of such a provision in 1-119 is extremely important, so as to keep the agencies from using delay as a means for withholding information.

Our research shows that this section 2(C) of the Order has not been complied with (Four out of four requests giving a delay decision did not mention the availability dates.). We feel, however, that such delay provisions are important to include and recommend that you retain this procedure from the Commissioner's Order. We also recommend the inclusion of a provision requiring that referrals to another person or an office be considered a delay and treated as such.

Denial: Bill 1-119 as it is presently written does not deal with the procedure for a denial response. We believe it is important that all denial letters contain the reasons for denial, the name of the person making the denial determination and the appeal mechanism available to the requestor. For more specific language, we direct the committee's attention to the D.C. Bar testimony.

PROCEDURES FOR NO-RESPONSE

Neither Bill 1-119 nor the Commission's order 71-730 mentions the consequences if an agency does not respond to a request. Over 42% of the requests made by PIRG received no response. This figure demonstrates that agencies avoid complying with a request simply by not responding. To eliminate this method of circumventing the intent and procedures of the bill, we suggest that all failures to respond be deemed an automatic denial. The requestor would then have a legal right to initiate the appeal process. Once again, the testimony of the D.C. Bar provides the specific language for this important provision.

EXEMPTIONS

DC PIRG agrees with the types of material exempt from disclosure, but would desire more specific language in the case of releasing information when only a portion is exempted. It must be a clear intent of this bill that deleting selected portions is not grounds for withholding the entire document.

NON-GOVERNMENT DOCUMENTS

The District government should be required to secure the release of all information directly affecting the District, regardless of where the information originated.

THE REVIEW AND APPEAL PROCESS

Our research shows that the appeal procedure of 71-370 was ineffective. We made three requests for review by the Public Information Review Board for agency failures to comply with the time limits set out in 71-370. We received no acknowledgement of the receipt of any of our review requests and received the information requested in two of the three requests. According to 71-370, the Public Information Review Board serves to administer and supervise the Order by reviewing all appeals and denials for information, and also the complaints about time-limit violations. Our research also reveals that the Review Board has not met in over a year and that one of the two citizen positions stands vacant. In addition, the Executive Secretary of the D.C. Government, who is also the Chairperson of this Review Board, has dealt with all the requests for reviews on what he terms "an informed basis, serving to facilitate the release of information."

In the proposed bill Section 7, Enforcement, any person denied access to a public record may petition the Corporation Counsel to make a determination.

DC PIRG questions the logic of adding the major responsibilities that the enforcement section of 1-119 requires to the already overburdened duties of the Corporation Counsel.

Based on the poor record that the Corporation Counsel has exhibited in requests from the City Council this year, you can imagine the difficulty the citizens will have in obtaining the timely response of the Corporation Counsel. It could therefore, prove to be a mistake to assign the Corporation Counsel as the intermediary review body between the requestor and the Courts.

We may later discover that the Corporation Counsel could find itself reviewing an appeal of a decision that it helped an agency originate.

In addition to the ineffectiveness of the Review Board, our research shows that the Commission's Order has not been effectively implemented. For example, section 2(b) of the order requires each agency to maintain a file of all letters of denial. This has been eliminated from bill 1-119 and should be reserved in the new statute. Four out of five agencies surveyed have not kept a file of this type. As another example, the letters requesting the published fee structure, mentioned previously, also asked for the agency's established procedures for carrying out the Order. The development of these procedures is required under section 2(b). It seems that the surveyed agencies, with the possible exception of the Department of Human Resources, have yet to develop their procedures. DC PIRG has learned that Mr. Yeldell keeps a list of organizations which must be screened before the release of information. In our opinion, this does not correspond to the "reasonable procedures" required in 2(b).

Bill 1-119 does not contain even simple requirements or recommendations for implementation. This disregard for implementation together with our experiences with the review process leads us to suggest the creation of an independent commission. We are aware of the Committee's examination of New York's Access to Records Law and pro-

pose that it be adapted to the District and used as a model. The Commission, composed of representatives from the government, the media, and the public, would have three primary functions:

(1) Serve as an intermediary step between the agencies and the courts. The Commission would review any denial by the Mayor or an agency to release information. If the Commission declares the document to be public and the government still refuses to comply, then the Commission would direct the Corporation Counsel to bring suit in the name of the District of Columbia to compel disclosure. The Court shall determine the matter de novo and the burden would be on the Mayor or an agency to sustain its action.

(2) The Commission would assist the agencies in implementing the law by issuing rules, guidelines, opinions, and regulations. This would help clarify any abstractions or gray areas left by the law.

(3) The Commission could recommend possible changes or clarifications in the law to the Council.

In conjunction with the Commission's role we suggest two additional means for insuring effective implementation:

(1) employee education—provide each D.C. government employee with material on the rights and responsibilities of both the citizens and government officials and employees under the freedom of information statute.

(2) inter-agency symposiums—enabling the agencies to benefit from each other's experiences. We are fully aware that an undertaking of this type requires a certain expenditure of funds which as we also know are in short supply. As part of our research we attempted to secure detailed information concerning the administrative costs of freedom of information laws throughout the country. At present, we are still seeking this information. Nevertheless, we feel that the District must make this limited financial commitment if the policy stated in section 2 is to be realized.

SECTION 8 PENALTIES

We believe the amount of the proposed fine could be prohibitive and we refer the committee to the recommendations made by the D.C. Bar for this section.

In conclusion, DC PIRG has documented agency failures to comply with the present law as well as the law's general ineffectiveness. Furthermore, we have discussed several critical changes necessary for the proposed law:

(1) Broadening the law's coverage.

(2) Retaining the provisions for delays and expanding it to include referrals.

(3) Providing procedures for deleted portions and the failure of an agency to respond.

(4) Most importantly, the establishment of the independent Commission.

If this bill is enacted in its proposed form DC PIRG feels that the Council could be taking a step backwards from the present Commissioner's Order. This problem could be avoided by a strong effort to insure that the proposed procedures are carefully and systematically incorporated into the functioning of the City's government. DC PIRG has studied the literature on implementing this type of bill and would welcome the opportunity to assist the Council in any way possible.

SUMMARY OF DC PIRG RESEARCH

| Request type | Number of requests | Unsatisfactory responses classification | | | | | | | | No response | |
|---------------------------------|--------------------|---|--------------------------|-------------------------|----------------------------|--------------------------|------------------------------------|---|---|-------------|------|
| | | Satisfactory responses | Unsatisfactory responses | Response late, no delay | Response incomplete, delay | Unsatisfactory referrals | Unsatisfactory delays ¹ | | | | |
| | | | | | | | Number | A | C | | E |
| Request did not refer to 71-370 | 34 | 10 | 9 | 5 | 1 | 2 | 1 | 0 | 0 | 1 | 15 |
| Percent | | 29.4 | 26.5 | | | | | | | | 44.1 |
| Request did refer to 71-370 | 51 | 16 | 14 | 8 | 5 | 2 | 3 | 1 | 0 | 3 | 21 |
| Percent | | 31.4 | 27.5 | | | | | | | | 41.1 |
| Total | 85 | 26 | 23 | 13 | 6 | 4 | 4 | 1 | 0 | 4 | 36 |
| Percent | | 30.6 | 27.1 | | | | | | | | 42.3 |

¹ Delays:

- A—Response of letter containing delay late.
- C—No reason for the delay.
- E—No date at which information available.

STATEMENT OF WILLIAM A. ROBINSON, ASSISTANT CORPORATION COUNSEL, D.C., BEFORE THE JUDICIARY AND CRIMINAL LAW COMMITTEE, COUNCIL OF THE DISTRICT OF COLUMBIA, ON BILL 1-119.

JANUARY 28, 1976.

Mr. Chairman and Members of the Committee: I am pleased to appear before the Committee today to testify on Bill No. 1-119, a bill which, among other things, would create a freedom of information act for the District of Columbia.

We have certain reservations with respect to the bill's provisions, not because of the purpose of the bill to require reasonable disclosure of information regarding the affairs of government and official acts of the elected and appointed officers and employees of the District of Columbia government, but because the bill fails to include many of the significant exemptions provided in the Federal Freedom of Information Act and in Commissioner's Order No. 71-370, which is a type of freedom of information act under which the District government has been operating since late 1971.

For instance, Commissioner's Order No. 71-370 exempts from public disclosure "records specifically exempted from disclosure from law." Thus, if the proposed bill were enacted in its present form, juvenile records now exempt from public disclosure under the provisions of D.C. Code § 16-2334, would be subject to release as public information. This would defeat the existing salutary purpose of confidentiality of these records to aid in the social rehabilitation of juveniles who have been enticed into the commission of crimes.

The proposed bill contains no provision exempting from public disclosure "investigatory records compiled for law enforcement purposes," such as that now contained in the Federal Freedom of Information Act. Section 5(A) (3) of the proposed bill is overly broad in its inclusion of "investigative" records, and would limit nondisclosure of the information would harm the agency." No consideration appears to have been given to whether the divulged information may be harmful to the individual. We would recommend that the provisions contained in the Federal law be followed in this respect.

Bill 1-119 fails to specify that requests for public information may be denied where the requests are so unspecific as to burden the government agency involved in compliance with the request. Lack of such specificity could result in private individuals, groups, or organizations conducting massive fishing expeditions for government information which may or may not be relevant. The cost of conducting such record searches and the burden of providing copies to those seeking such information, whether the information could serve a reasonable or useful need or not, could amount to thousands of dollars and hundreds of man hours.

It could serve a very useful purpose to the District if the present bill were modeled more closely after the Federal provisions governing freedom of information. Many courts have already construed the provisions of the Federal Act and thereby given a clarifying definition of its requirements. Such court precedents would serve as a useful guide in interpreting and construing such an act, if it were adopted for the District.

A clear conflict of interest is apparent in section 7(A) of the bill in that it authorizes the Corporation Counsel to bring suit against any District agency which fails to release any record or document which he determines to be withheld contrary to the provisions of the bill. As a result of this provision, the Corporation Counsel would be faced with the very real possibility of having to go into court to sue either the Mayor, an executive agency, or the Council of the District of Columbia to force them to release the withheld information and, in the same case, defending the action as legal representative of the Mayor or agency.

Section 7(c) of Bill 1-119 requires the courts of the District of Columbia to give precedence on their dockets to suits brought to enforce the provisions of this bill. While a similar provision is contained in the Federal law, it would appear that section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act, which proscribes the Council from enacting any act relating to the organization or jurisdiction of the judicial system in the District of Columbia, would prevent its inclusion in the bill.

Finally, the proposed bill provides for criminal fines of up to \$1,000 for violations of its provisions, but it is silent with respect to the possibility of administrative or disciplinary sanctions against District employees who violate the provisions of the bill. Such sanctions might be preferable in certain cases to a mere money fine, and would provide greater flexibility to the Executive Branch in enforcement of the bill's provisions.

We have attempted in this brief presentation to highlight some of the more obvious problem areas posed by the bill. In addition to the technical drafting changes which should be made, we suggest that the Committee may also wish to address itself to matters which have been omitted from the bill. For instance, the bill should contain a "definitions" section to define terms which are not defined elsewhere. We believe it would be advisable to provide for some form of administrative review, either by an intra-agency or inter-agency body, of denials of requests for information. Such a review procedure may result in the favorable disposal of many of these requests and obviate the need for court proceedings. The bill should provide authority for the imposition of a fee schedule in order to defray the costs of making available copies of the requested information. Finally, it is our view that a revised bill could serve to increase the scope of information available to the public by bringing the independent agencies of the District within its coverage. The existing disclosure order is limited to those departments and agencies which are directly under the jurisdiction of the Mayor and thus its provisions are not applicable to those independent agencies who are authorized to establish their own operating procedures and policies.

We would be glad to work with the Council and its staff in the preparation of an alternative measure which would provide the safeguards and exemptions we believe necessary and at the same time provide a method for making available pertinent and relevant government information of a public nature.

COMMENTS OF D.C. BAR, DIVISION I, COMMITTEE ON ACCESS TO GOVERNMENT INFORMATION, REGARDING BILL NO. 1-119: A PROPOSED FREEDOM OF INFORMATION ACT FOR THE DISTRICT OF COLUMBIA

Bill No. 1-119 (attached as Appendix A) is an important proposal intended to facilitate public access to government-held information by limiting discretion to withhold official records to only those cases in which confidentiality is clearly necessary in order to protect a legitimate private or public interest. In enacting such a public records law, the District of Columbia would join the forty-five states which have enacted state-wide open records legislation. Only Delaware, Vermont and West Virginia have *no* open records laws, and such bills have been introduced for consideration in each of these states.

Bill 1-119 would give any person a right of access to any record in the possession of the mayor or other executive agency of the District of Columbia, subject to specified exceptions. Decisions to withhold records pursuant to any of these exceptions would be subject to judicial review. This approach is generally aligned with the Federal Freedom of Information Act, 5 U.S.C. § 552, *as amended by*, Pub.L. 93-502, 88 Stat. 1561, which has proven workable in accomplishing the difficult task of balancing the public's right to know against certain private rights of confidentiality and the interest of the public in effective government. The Committee on Access to Government Information (the "Committee") feels that the structure and approach of Bill No. 1-119 is a sound one, except that the total exclusion of the Council of the District of Columbia (the "Council") and the judiciary from the bill's purview is unwise.

Bill No. 1-119 would repeal and replace Commissioner's Order No. 71-370 (Nov. 2, 1971) (attached as Appendix B), which presently governs the availability to the general public of official records of the executive agencies of the Government of the District of Columbia. This Order has proven to be inadequate in several respects:

(1) It has never been fully implemented or enforced. For example, Section 4 of the Commissioner's Order creates a Public Information Review Board to administer and supervise the Order, and requires that two members of this Board represent the general public. The first of these representatives was not appointed until June 14, 1974, and the second has still not been appointed. Similarly, Section 2(b) of the Commissioner's Order requires each agency of the District of Columbia to keep on file all letters of denial, but many agencies do not compile such letters; Section 2(b) further directs that every letter of denial state the reason for the denial and outline the review procedures provided in Section 5 of the Order. Telephone inquiries to several agencies indicate that many agencies may not have followed this procedure.

(2) The Commissioner's Order is substantively deficient in that it applies only to the executive branch of government; there is no provision for judicial review; and there are no sanctions against those who refuse to abide by the Order. It contains many of the loopholes that Congress found in the original Federal Freedom of Information Act, 5 U.S.C. § 552, and which necessitated passage of the 1974 Amendments to that Act (Pub.L. 93-502, 88 Stat. 1561). *See* H.R. Rep. No. 92-1419, 92d Cong., 2d Sess. (1972). For example, the provisions in

the Commissioner's Order relevant to fee schedules (section 2(c)) and law enforcement files (section 3(a)(2)) appear insufficient in light of the finding by Congress that similar wording in the federal law needed to be made more specific to prevent intentional obstructions to the release of information.

(3) So little publicity has been given to the rights of the public under this Order that few government employees, and even fewer members of the public, know or understand those rights. Indeed, the Commissioner's Order presently appears in the District of Columbia Code only as a note following section 1-1504.

The following comments on proposed Bill No. 1-119 are on a section-by-section basis. All the suggested amendments that appear in the text of the comments have been incorporated into a proposed amended bill, which is attached as Appendix C. For convenience in comparing Bill 1-119 with the Committee's proposed amended bill, they have been reproduced side-by-side as Appendix D.

I. SECTION 2 : PUBLIC POLICY

The importance of the Council's initial statement of policy and purpose should not be underestimated. Courts frequently turn to such broad policy language to resolve ambiguity in a direction that the legislature would most favor. The section, as written, should help to insure that the provisions of the Act will be construed in a manner maximizing public disclosure.

The Committee recommends one modification, however. In the second sentence, the Council's overall purpose would be better conveyed if the period were to be replaced by the following words: "and the minimization of costs and time delays to persons requesting information." The Federal experience has shown that excess monetary charges and unnecessary delays in complying with requests were major shortcomings of the original Information Act. While Bill 1-119 contains safeguards to protect against these abuses, the addition of this further policy statement should assist agencies, courts and citizens in interpreting the Act.

II. SECTION 3 : DEFINITIONS

This section provides that the term "public record" includes, but is not limited to, any documentary record regardless of its physical form, indicating that a public record is not necessarily a written document. This definition recognizes that much of what city, state and federal governments retain on file is kept in computers, or microfilm, or in pictorial form.

This section also makes clear that all records "prepared, owned, used, in the possession of, or retained by" public officials are subject to the Act, whether or not they are *required* to be kept by law. The Committee believes that this broad definition of a public record is sound, and that it is necessary to insure that the objective of the fullest possible public disclosure is not thwarted by an unduly narrow interpretation of the Act's coverage. In the absence of such a definition, some state courts have applied common law principles in interpreting state access laws in such a manner as to restrict public access to only those records which are required *by law* to be compiled and retained. *See, e.g., State ex rel.*

Beckley Newspapers Corp. v. Hunter, 127 W.Va. 738, 34 S.E.2d 468 (1945). Consequently, evaluations, lists of recipients of free football tickets, minutes of meetings, and other similar documents have been excluded from coverage of some state freedom of information laws because they were not by law required to be kept. *E.g., McMahan v. Board of Trustees*, 255 Ark. 108, 499 S.W.2d 56 (1973). Such a narrow view of the public's need to know is unfortunate. Any records of sufficient importance for the government to retain are also of sufficient importance to be the subject of a public records law. All legitimate needs for confidential treatment of information are adequately protected by the disclosure exceptions contained in Section 5.

The Committee recommends the following important amendments to this section: (1) strike "(14)" and insert in lieu thereof "(15)"; (2) strike "the Mayor and agencies" and insert in lieu thereof "a public body"; and (3) following "in Section 13:", insert "(14) the term 'public body' includes: (A) every officer, agency, department, division, bureau, board, or body in the executive branch of the Government of the District of Columbia; (B) every officer, board, commission, council, or committee in the legislative branch of the Government of the District of Columbia; and (C) every officer, judge, court, board, department, commission, council or agency in the judicial branch of the Government of the District of Columbia."

We recommend the addition of this definition of "public body" in order to establish that the law is to apply not only to the executive branch, but also to the legislative and judicial branches. It is intended that no government body or authority be excluded from this definition, and consequently that the Act reach every public record of the District of Columbia Government. The public's need to know how its elected Council members, and their appointed staffs, are performing their jobs is at least as great as its need to know how its elected mayor, and appointed executive officials and employers, are performing theirs. At least eleven states have enacted freedom of information statutes that apply to both the executive and legislative branches of government. The unwillingness of the United States Congress to subject itself to the Federal Freedom of Information Act has sometimes been used by Federal bureaucrats as a rationalization for less than full compliance with the spirit of that Act. Including the legislative branch within the Act's reach will allow voters to make more informed decisions at election time, and to more effectively make their voices heard between elections.

The Committee also believes it important that the judiciary be included under the provisions of this Act. In varying degrees, at least three states (California, Connecticut and Montana) presently include the judiciary under their public records laws. There is no readily apparent reason why a court's internal operating procedures should not be made available to the public. As the Commission on Revision of the Federal Court Appellate System, chaired by Senator Roman L. Hruska, recently stated when suggesting a notice and comment rule-making procedure for the judiciary:

* * * Finally, publication of a court's internal procedures can help to maintain public confidence in the soundness and integrity by which federal appellate judges reach their decisions. . . . Open discussion of the various differentiated

procedures and the way they operate should provide assurance that the decision-making process is a fair one; that judges remain in control of judicial decisions; that no type of case is given "second class status"; in short, that the judicial function is being conscientiously and independently exercised by those who were appointed to exercise it, and that neither efficiency nor fairness has been sacrificed.

Structure and Internal Procedures: Recommendations for Change 45 (1975). Thus, for example, a court's criteria for denying oral argument, and its descriptions of local practice concerning such matters as the conference of judges, should be available for public inspection. *Id.* This is equally true of methods for the assignment and reassignment of cases. Likewise, if a court informally creates standards for itself on such questions as sentencing or judicial disqualifications, those standards should be made available to the public. Additionally, few would argue that the judiciary should not disclose its records of expenditures and disbursements of public moneys. *See, e.g.,* 2 Cal. Code § 6261 (1975).

However, the full ramifications of any changes in this sensitive area are difficult to foresee. The Committee believes that hearings at which representatives of the judicial branch would have the opportunity to present their views would allow the Council to better determine the appropriate degree of coverage of judicial records and the types of access restrictions that are needed in this area. The judiciary is in many respects unique because: (1) judges have small staffs who traditionally work in close confidential relationships with them; (2) court hearings are open and include the formal protection of the adversarial process; and (3) decisions are generally available in written form. Much of what the judiciary does should be non-disclosable. Hearings are thus necessary to identify more precisely what judicial records can be included under the Act without threatening the orderly functioning of the courts.

For the reasons stated below with respect to Section 6 of Bill No. 1-119, it may also be advisable to add a new subsection (16) to D.C. Code § 1-502, reading as follows: "'adjudication' means agency process for the formulation of an order."

Finally, to correspond to Section 3, paragraph (A) as amended above, paragraph (B) should be amended by striking the entire sentence and inserting in lieu thereof the following: "Section 1-1502 of the District of Columbia Code is hereby amended by striking (14), (15), and (16), and inserting (17), (18), and (19), in lieu thereof respectively."

With the adoption of these amendments the Committee would entitle this Section "Definitions of 'Public Record'; 'Public Body'; and 'Adjudications.'"

III. SECTION 4 : ACCESS TO PUBLIC RECORDS FROM THE MAYOR AND AGENCIES

This is the central section of the Act. It creates the right of any person to have access to any document in the possession of the executive branch of government, subject to certain exceptions enumerated in Section 5. However, it recognizes that some flexibility must be granted in the physical handling of requests. Thus, subsection (A) gives the gov-

ernment the authority to establish reasonable rules to control the time and place of public access.

As recommended in our comments on Section 3(A), the Act should apply to all public bodies, not just "the Mayor and Agencies." The words "mayor or an agency," "the mayor or agency," and "the Mayor and Agencies" should be struck wherever they appear, and the words "a public body" inserted in lieu thereof. Further, in accordance with the apparent purpose of this subsection, the words "to inspect or copy" should be modified to read "to inspect and, at his or her discretion, to copy." This change is intended: (1) to insure that a person may have access to the original of a record, not just a reproduction which may not fully reveal all markings; and (2) to make clear that one need not incur the costs of reproduction if simple inspection will adequately serve the requester's purpose. Additionally, subsection (A) would read more smoothly if the word "as" were inserted after "except" and before "otherwise." Also, the Committee recommends that the word "(exemptions)" be struck from subsection (A), and the "(exceptions)" be inserted in lieu thereof. This amendment is consistent with an identical amendment to section 5, which is explained in conjunction therewith. Finally, in the last sentence of Section 4(A), the words "that may be issued after notice and comment by a public body" should be inserted after the word "rules" and before the word "concerning."

Subsection (B) balances the cost of government compliance with sometimes large requests against the danger, borne out by experience on both federal and state levels, that some government officers will use excessive fees in a deliberate effort to hamper public access to information. The provision allows a public body to charge for the actual costs of locating documents and making photocopies. If a requester asks for a photocopy of every document in a particular government office, that person, not the taxpayers, should bear the cost of physically collecting and copying these documents. However, the subsection also makes clear that the government, not the requester, should bear the cost of reaching a *policy* decision as to whether or not the documents should be made public. To do otherwise would be to allow government agencies to charge to determine whether a document is public. That could be used to justify fees without limit, so this Bill, like the amended Federal Act (5 U.S.C. § 552(a)(4)(A)), properly prohibits this.

Subsection (B) also provides explicit authority for the waiver of fees when disclosure can be considered as "primarily benefiting the general public." This provision is also drawn from the Federal Act, and is apparently intended to be invoked for most requests from journalists and public interest groups, but not for the benefit of commercial companies seeking information primarily for their own financial gain. We believe that the language allows waivers for indigents and for most requests involving low dollar amounts, where collection and accounting costs to the District government may exceed search and duplication costs.

The Committee suggests several modifications intended to better convey the purpose of subsection (B). First, a comma and the word "direct" should be added after the word "actual" and before "cost", so that only the "actual, direct cost" of search and duplication can be charged. This avoids difficulties involving allocation of overhead expenses and the like. The Federal Act contains this same limitation on

costs. 5 U.S.C. § 552(a) (4) (A). Second, the last line of subsection (B) should be made more specific in order to make it consistent with our recommendation that Section 5 include a subsection (B) obligating officials to separate, within a record, material that must be disclosed from material that may be withheld. Therefore, we recommend that the phrase ", or portions of public records," be inserted in the last line of paragraph (B) after the word "documents". Third, the word "documents" should be changed to "public records" both times that it appears, and the word "public" should be inserted between "of" and "records" in the first sentence. Fourth, for the sake of clarity and emphasis, the last sentence in paragraph (B) should be inserted as the second sentence of that paragraph.

The Committee recommends one substantive amendment. The second sentence of paragraph (B)—the third and last if the order is changed in the manner recommended above—should be amended to read as follows: "Public records shall be furnished without charge or at a reduced charge when furnishing the information can be considered as primarily benefiting the general public." This change aligns the D.C. Act with the amended Federal Freedom of Information Act, 5 U.S.C. § 552(a) (4) (A). The change is intended to give public bodies more direction by generally requiring waiver or reduction of fees whenever the public is the primary beneficiary of disclosure, and to limit a public body's discretion to deny a waiver. Under the present waiver provision a public body could deny a waiver of fee reduction even though it correctly determined that disclosure would primarily benefit the general public. Under the Committee's proposal, a public body would have discretion only in determining whether disclosure would primarily benefit the general public. We believe that it would be an abuse of discretion to decide to never grant waivers or to generally deny waivers and fee reductions to journalists, indigents or public interest groups, for example.

Subsection (C) of Section 4 insures that the government will have a reasonable period of time in which to respond to requests for public records. But this must be a finite period. The Committee agrees that to allow a greater delay than 15 days, as by imposing no time limits, would permit secrecy by default. The present Commissioner's Order No. 71-370, like the Federal Act, allows ten days in which to respond to requests (§ 2(a)). We believe ten days to be sufficient time in which to respond initially. To insure that there will be no further delays, the Committee recommends that the following sentence be added at the end of subsection (C): "Any failure on the part of a public body to comply with a request under subsection (A) within the time provisions of this subsection shall be deemed a denial of the request." Experience with the Federal Freedom of Information Act prior to the 1974 amendments (Pub. L. 93-502, 88 Stat. 1561) revealed a pattern of continual delay in responding to requests for information, whether deliberate or not. This recommended amendment should help to insure that non-compliance will be the exception, not the rule. A technical amendment is also in order to insert the word "public" after "for" and before "records" in the first sentence of paragraph (C).

Finally, we would recommend for the sake of clarity that subsections (B), dealing with costs, and (C), dealing with time limits, be

reversed in order, and that the title of this section be amended to read "Right of Access to Public Records; Allowable Costs; Time Limits."

IV. SECTION 5: EXEMPTIONS

To begin, the Committee recommends that Section 5 should be interchanged with present Section 7, and Section 7 renumbered as 5, because we believe that such a change in organizations permits a clearer understanding of the rights of citizens and the duties of government officials under the Act. Since the Committee is also recommending the insertion of a new section just before the present Section 6 (and renumbering accordingly), Section 5 under our scheme would be renumbered as Section 8.

Present Section 5 recognizes that there are reasons why certain information should not be required to be made public. These reasons are specifically enumerated. The use of the word "may" in subsection (A), however, indicates that withholding information for any of the enumerated reasons is intended to be permissive, not mandatory. This is apparently true of the Federal Freedom of Information Act, 5 U.S.C. § 552 (*see* S. Rep. No. 93-854, 93d Cong., 2d Sess. 6 (1974); H.R. Rep. No. 92-1419, 92d Cong., 2d Sess. 3 (1972)), although there *Compare Sears, Roebuck & Co. v. GSA*, 384 F. Supp. 996 (D.D.C. 1974), *stay denied*, 509 F. 2d 527 (D.C. Cir. 1974) (exemptions permissive) with *Westinghouse Electric Corp v. Schlesinger*, 392 F. Supp. 1246 (E.D. Va. 1974) (exemption 4 mandatory), *appeal pending*. The Justice Department has taken the position that a decision to withhold records when an exemption applies is discretionary (Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act 2-3 (1967)), and many agencies have by regulation provided that, notwithstanding applicability of an exemption, records must be disclosed when to do so is in the public interest. *E.g.*, State, 22 C.F.R. § 6.4(b); HUD, 24 C.F.R. § 15.21; Labor, 29 C.F.R. § 70.22(b); Interior, 43 C.F.R. § 22; HEW, 45 C.F.R. § 5.70; DOT, 49 C.F.R. § 7.51. *See also* K. Davis, *Administrative Law Treatises*, § 3A.5 (Supp. 1970).

In any event, this is the preferred approach because it preserves the discretion of a public body to disclose records in special circumstances, where the public interest overrides what might otherwise be a sufficient reason not to disclose those records. For example, an agency might rightly determine that in order to protect the safety of a large number of workers, it must disclose something which is technically a trade secret, and thus excepted from mandatory disclosure. Moreover, there is no adequate justification for preventing an agency from waiving a privilege intended to protect that agency. Taken to its logical extreme, if the exceptions from disclosure actually prohibit disclosure, then no prosecutor could ever convict a law violator, because he would be prohibited from disclosing much of his evidence because it consists of law enforcement records (exception 3). The Committee recommends that the Council clarify its intent that the exceptions only permit (not require) non-disclosure by entitling section 5 "Exceptions from Mandatory Disclosure" (rather than "Exemptions" from the Act), by amending the first line of subsection (A) by striking the word "exempt" and inserting the word "withheld" in lieu thereof, and

by amending the second line of subsection (A) by adding a comma after the word "Act" and inserting thereafter the words: "but these exceptions from mandatory disclosure only permit, and never require, withholding by a public body:".

The Committee generally agrees with the specific reasons for non-disclosure contained in the proposed Act and listed below, but would include two additional exceptions listed as (4) and (5) below.

(1) *Trade secrets*. The first disclosure exception protects trade secrets, which are precisely defined. The definition adopted is the one used in a Federal Freedom of Information Act case, *Consumers Union, Inc. v. Veterans Administration*, 301 F. Supp. 796, 801 (S.D.N.Y. 1969), *appeal dismissed as moot*, 436 F.2d 1363 (2d Cir. 1971). The exception recognizes that, while it is necessary for the government to collect relevant data about businesses which it regulates, certain data whose value to businesses would be lost if it were disclosed to competitors should generally be held in confidence. This exception also recognizes, however, that not all business data deserves protection, and that the public interest in disclosure may often outweigh the private interest in secrecy. For example, when a business contracts to construct a public building, the public is entitled to inspect the contract, bidding information, payment agreements, and so forth.

Especially deserving of protection are so-called "trade secrets." This is not just because they are commercially valuable to businesses, but because many economists believe that by protecting such information the government fosters innovation, and that innovation is a necessary catalyst to increase productivity in the modern industrial economy. This is the reason that patents and copyrights are protected by monopoly grants from the state. This reasoning does not apply, however, to other types of business information, the protection of which cannot be expected to foster innovation. In general, the more information available about the conditions of the market, *i.e.*, prices, costs and so forth, the better the market mechanism works. Conversely, keeping non-trade secret information from the public causes market imperfections which often result in higher prices and fewer products, without any compensating public benefit such as the promotion of innovation which may arguably result from protecting true trade secrets. This is a powerful argument in favor of limiting an exception for business information to a narrow category of trade secrets, as has been done in Bill 1-119. Section 5 (A)(1) has the additional advantage of being precise in its coverage, and leaving relatively little room for disputes about its meaning. This is particularly evident when this definition of a trade secret is compared with the broader, more ambiguous approach taken in the Restatement of Torts, Volume IV, § 757(B) (1939), which would apply to "any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know it or use it." The latter would lead to difficulty in interpretation and might protect some information (such as safety test results or lists of employees), for which the public benefit from disclosure outweighs any reasonably foreseeable private detriment.

However, there are reasons for protecting certain other business data. In the first place, there is a general feeling at least among businessmen that it is unfair for the government to require a business to

furnish the government with information which the business considers to be "proprietary," and then to turn that information over to the business' competitors. Unfortunately, businesses generally consider almost all information about a business, no matter how innocuous, to "proprietary." Often the information which they most desire to keep secret is that which the public most deserves to know, *e.g.*, that a particular product is unsafe, that a company has used deceptive or fraudulent business practices, or that a business discriminates against minorities or women. There is, however, some force to this argument in those instances where disclosing information would give other businesses a substantial and unfair advantage in the marketplace. A second reason for protecting some non-trade secret information is that the government must sometimes rely upon voluntary cooperation as a method of securing important information from businesses, and such cooperation is not apt to be forthcoming if it can be expected to result in serious competitive injury to those businesses. For example, certain business plans for future action may sometimes deserve protection until they have either been carried into action or abandoned. Likewise, a company's bid on a government contract may deserve protection until all of the bids have been submitted, even though disclosing it may mean that another company would submit a lower bid which would save the government money. This does not mean, however, that all costing or pricing information should be protected. A market economy generally works best when the amount of cost, price and similar information is maximized, and the fact that making this information available may allow a more efficient competitor to undercut another's prices, far from being unfair, proves that the competitive system works.

The Federal Freedom of Information Act does protect some non-trade secret information, allowing the withholding of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b) (4). Although the particular wording of the exception is unacceptable because it is ambiguous, ungrammatical, and confusing, the basic concept of the exception has some merit. The exception has generally been interpreted to apply to: (1) trade secrets or (2) information which is (a) commercial or financial, (b) obtained from a person, and (c) privileged or confidential, *e.g.*, *Getman v. NLRB*, 450 F.2d 670, 673 (D.C. Cir. 1971), although some early decisions applied it to all "confidential" information. *E.g.*, *Barceloneta Shoe Corp. v. Compton*, 271 F.Supp. 591, 594 (D.P.R. 1967). Confusion has arisen over the meaning of "confidential." Some courts interpret this to protect any commercial information which is "customarily" considered to be confidential, but the Court of Appeals for the District of Columbia Circuit has held that in addition the disclosure of such information must be:

likely to have either of the following effects (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974); *rev'g* 351 F.Supp. 404 (D.D.C. 1972); *accord*,

Petkas v. Staats, 501 F.2d 889, *rev'g* 364 F.Supp. 680 (D.D.C. 1973), As interpreted, this exception begins to take on an understandable meaning and to approach an objective test, *i.e.*, substantial competitive injury. The use of the word "likely", however, still causes a great deal of uncertainty and can be expected to lead to much more litigation. Further, while one purpose of the exception is to protect the ability of the government to obtain necessary information, this can be adequately protected by preventing substantial and unfair injuries to a business' competitive position. Thus, the first prong of the *National Parks* test is redundant and therefore unnecessary. Further, while one can almost always perceive some type of injury which might result from disclosure at some indeterminate time in the future, information should not be kept from the public as a result of mere speculation. A statute is needed which would generally protect trade secrets as defined in Bill No. 1-119, and which would protect certain commercial or financial information from mandatory disclosure, but which would not protect all trade secret information as defined in the Restatement of Torts. Commercial and financial information—not all business-related information—should be protected only when disclosure would result in substantial and unfair competitive injury to its submitter.

There is, however, one instance in which commercial or financial information may deserve protection even though its disclosure may not cause harm to the particular submitter of the information. That is when disclosure would lead to serious and undue speculation in currencies, securities, or commodities. There may be a need to add "real properties" to this list, especially in connection with the District Government's invocation of the power of eminent domain. However, the Committee did not feel that it had adequate information on the methods used in such real property transactions, and hence could not accurately assess the need for such protection.

In view of the above, the Committee recommends that subsection (A) (1) of section 5 be deleted and that the following language be inserted in its place:

(1) confidential commercial or financial information to the extent that disclosure would:

(a) result in substantial and unfair competitive injury to the submitter of that information to a public body, if the submitter has specifically requested that the information not be made public, or, if submitted prior to the effective date of this Act, such a request is reasonably to be implied from the circumstances of the submission; or

(b) lead to serious, undue, financial speculations in currencies, securities, or commodities.

The Committee believes this language strikes a fair and workable balance between competing public and private interest, giving adequate protection to businesses without unnecessarily keeping important business information from the public.

2. *Personal Privacy*. Co-equal with the public's right to know is an individual's right to privacy, which enjoys some constitutional protection. (*See, e.g., Roe v. Wade*, 410 U.S. 113, 152 (1972); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)). The importance of this right was recently recognized in the Federal Privacy Act, 5 U.S.C. § 552a, and a similar measure is presently pending before the District of Columbia

Council (Bill 1-152). However, to allow withholding of all information that might be labeled personal would be far too broad. Much information, like the civil service grade level of District employees, the names of persons convicted of crimes, the names of licensed individuals such as doctors, lawyers, and taxi drivers, is personal information in the broad sense, but few persons would argue that these matters should be kept secret. To resolve this problem, Bill 1-119 properly follows federal law by providing that only where the disclosure of records containing information of a "personal nature", *i.e.*, intimate details of one's life, would constitute a clearly unwarranted invasion of personal privacy may they be withheld from public disclosure. This allows officials and judges to balance the public interest in disclosure against the degree of the invasion of privacy which would result therefrom. The appropriateness of this balancing test is discussed further in connection with section 5(A) (3)e, below.

3. *Investigatory Records.* Exception 3 protects law enforcement agencies from unwarranted disclosures which would hurt their criminal investigatory efforts. The Committee believes, however, that civil and regulatory, as well as criminal enforcement efforts should be protected. Furthermore, the words "not otherwise available by law" should be deleted because they are unnecessary, and their meaning is unclear. Hence, the Committee recommends that the first sentence of paragraph (3) should be amended to read as follows:

Public records of law enforcement agencies that were compiled as part of an investigation for law enforcement purposes, if the disclosure would harm the agency by * * *

The proposed Act goes on to list six ways in which such disclosure could harm the agency's efforts. These are sufficient to protect investigatory efforts. In order to maintain a consistent form, we suggest that the letters be enclosed in parentheses—as in "(a)", not "a". More substantively, the Committee suggests clarifying subsection (a) by specifying *to whom* informants might not otherwise be known. We recommend that the word "otherwise" be replaced by the word "generally" and that there be added the qualifying phrase, "outside the government." The entire phrase would then read "(a) disclosing the identity of informants not generally known outside the government." This would permit non-disclosure only where an informant's identity was not already public knowledge. Likewise, in subsection (c) the word "otherwise" should be replaced by the word "generally".

The Committee further suggests that the words "deprive", following (d), "constitute", following (e), and "endanger", following (f), be deleted and the words "depriving", "constituting", and "endangering" respectively be inserted in lieu thereof. These are merely technical changes intended to better convey the intended meaning.

Section 5(A) (3) (e) protects against disclosures that would "constitute an unwarranted invasion of personal privacy". This interest in non-disclosure has already been fully protected by paragraph (2) above, and is unnecessary and redundant here. Furthermore, most invasions of personal privacy are not likely to involve any direct harm to the efforts of the agency, which is the only type of harm protected pursuant to the prefatory paragraph to this subsection. For these reasons, all that follows (c), but comes before (f), should be struck, and all that follows (f) should be inserted in lieu thereof, and the letter "(f)" should be deleted.

In the event that subsection (c) is not struck, then it should be amended by deleting the word "an" and inserting the words "a clearly" in lieu thereof, so that it reads (with the change in form suggested above): "constituting a clearly unwarranted invasion of personal privacy". The addition of the word "clearly" is necessary to fully preserve the presumption in favor of disclosure, as contained in the public policy preamble of this Act. In Federal Information Act cases concerning 5 U.S.C. § 552(a)(6), even with the word "clearly" included, courts have shown a great reluctance to disclose any information which is even remotely personal in nature. Compare *Getman v. NLRB*, 450 F. 2d 670 (D.C. Cir. 1971) (names and addresses disclosed) with *Ditlow v. Shultz*, 517 F. 2d 166 (D.C. Cir. 1975) (deferred decision on whether names and addresses must be disclosed) and *Wine Hobby, USA, Inc. v. IRS*, 502 F. 2d 133 (3d Cir. 1974) (names and addresses withheld). While members of the Committee share that concern we fear that if the word "clearly" is not included, courts may prove so reluctant to disclose any records containing personal information that an unhealthy loophole in the freedom of information law would be created for secrecy-minded bureaucrats.

The Committee recommends an additional exception from the mandatory disclosure requirement, which would read as follows:

(4) Inter-public and intra-public body communications, but only to the extent that they do not fall within Section 6, involving: (a) deliberations among judges concerning prospective judicial decisions; (b) information routinely protected by the attorney work-product or attorney-client privileges; and (c) recommendations made by advisers on policymaking, adjudicatory, rulemaking, or judicial decisions, provided that this subsection shall not protect from disclosure inter-public body communications between any two or three branches of the District of Columbia Government as defined in subsections (A), (B), and (C) of Section 3 of this Act.

This provision recognizes that there is a public interest in protecting these types of intra-governmental communications: (1) judicial deliberations concerning cases in litigation; (2) those of or with attorneys concerning pending or prospective litigation or adjudication or otherwise involving legal advice to a client; and (3) policy-making deliberations between a chief and subordinates. These are each intended to allow open discussions of certain policy-formative and litigative matters. These types of communications have generally been protected by the courts (*see, e.g., Kaiser Aluminum & Chemical Co. v. United States*, 157 F.Supp. 939 (Ct.Cl. 1958) (Reed, J.)). The proposed exception has been phrased here to include matters that ordinarily fall within the privileges afforded to the attorney-client discussions and an attorney's work-product, as well as to the exchange of memoranda between judges and between a judge and his law clerks, should the judiciary be brought within the reach of this Act under Section 3. Recommendations, but not facts or the analysis of facts, would generally be protected from mandatory disclosure. The language of this section is intended to obviate some of the difficulties that courts and public bodies have encountered in trying to interpret the broad language used in exemption 5 of the Federal Freedom of Information Act: "(5) inter-agency memorandums or letters which would not be available by law

to a party other than an agency in litigation with an agency". See, e.g., *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). To keep the exception within reasonable bounds, it must always be interpreted narrowly commensurate with the Act's overall emphasis on maximizing disclosure.

This exception for certain deliberative, policy-formative and litigative information, however, would not protect any categories of information listed by the Council in Section 6 as presumptively disclosable. This is primarily to insure that the bureaucracy does not build a body of secret law or policy which could adversely affect citizens. The categories of information detailed in Section 6 each outweigh any possible adverse effects on intra-public body communications.

The Committee further recommends that the Council add an exception reading as follows:

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

This section would permit a public body to withhold test questions and answers, until they have been administered as part of an examination, in order to maintain the fairness and validity of the results. However, once administered, these test questions and any model, typical, or actual answers should be made available for public inspection and copying, whether or not they may be used again in future examinations. However, this does not mean that one can request, for example, all questions on a future examination which have ever appeared on a past examination, because this is a request for "Test questions and answers to be used in the future", rather than "previously administered examinations" (emphasis added). Moreover, when disclosing the actual answers given by examination-takers, the names and other readily identifying details may generally be deleted pursuant to exception (2) of this same Section of the Act.

The Federal Freedom of Information Act also contains five other disclosure exceptions which are not contained in Bill I-119. Exemption 1 of the Federal Act protects certain national security information and is therefore inapplicable to the local District of Columbia Government. 5 U.S.C. § 552(b) (1). Exemption 2 protects only a narrow category of information relating *solely* to personnel rules and regulations, 5 U.S.C. § 552(b) (2), and is unnecessary even at the Federal level. See *Vaughn v. Rosen*, 523 F.2d 1136, 1141-43 (D.C. Cir. 1975). Exemption 3 of the Federal Act allows withholding of information protected by various other Federal statutes. 5 U.S.C. § 552(b) (3). As recognized in Bill I-119, all legitimate interests in confidentiality are already protected by the specific exceptions from mandatory disclosure, and so an exception allowing withholding under other statutes is unnecessary. Indeed, an important advantage in making all rights of access to records turn on one statute is that the law is made readily available to government employees and citizens alike without the need of a lawyer to research the subject. Exemptions 8 and 9 of the Federal Act, which protect certain banking and geological information pertaining to wells, are essentially special interest exceptions having no proper place in a freedom of information statute. In view of our suggested amendment to Bill I-119's "trade secrets" exception, no further protection is necessary in these areas to protect the legiti-

mate interests of the banking and oil communities. Thus, the Committee believes that the decision not to incorporate these other exceptions into the D.C. Act is a sound one.

Two final important subsections should be added to this section: "(B) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (A)" and "(C) No Public record shall be withheld for any reason other than those that are specifically enumerated in subsection (A)." Proposed subsection (B), which is taken from the Federal Act, 5 U.S.C. § 552(b), is vital to the integrity of this law. Prior to its addition to the Federal Information Act in the 1974 amendments, some Federal officials argued that whenever any material within a document could be withheld, possibly a single name, then the entire document could be kept secret, even though all legitimate government concerns could be protected simply by deleting the particular work or passage. *See* H.R. Rep. No. 92-1419, 92d Cong., 2d. Sess. 55, 72 (1972). The addition of the recommended subsection (B) prevents the erection of such unnecessary barriers to disclosure, and insures that any material not subject to the exceptions will be made available to the public. Subsection (C) is needed in order to make it clear that no court shall have the power to go beyond the five exceptions which are explicitly enumerated and limited in subsection (A). Under this provision, courts would retain no power to extend these exceptions to cover public records which the court believes should be subject to withholding even though the legislature did not include them under any exception in subsection (A).

V. NEW SECTION: RECORDING OF FINAL VOTES

The Committee recommends the addition of a new section to be numbered 6, with all subsequent sections to be renumbered accordingly. The new Section 6 would read as follows:

Section 6: Recording of Final Votes:

Each public body having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that public body.

This section, modeled after subsection (a) (5) of the Federal Freedom of Information Act, 5 U.S.C. § 552(a) (5), is necessary to insure that a record will be kept of all final votes. Without this provision, the mandate of subsection 8 of present Section 6 can easily be avoided simply by neglecting to record the results of votes. Our proposed new Section 6 would also require that the vote of each member of a public body be recorded and disclosed on an individual basis. Thus, the use of such phrases as "a majority voted for X", which do not reveal specifically which members voted for a given position, would be inadequate.

VI. SECTION 6: INFORMATION WHICH MUST BE PUBLIC

The introductory paragraph to Section 6 is internally contradictory. On the one hand, it says that it does not limit the meaning of any other section of the Act, presumably including the exceptions from the disclosure requirements. On the other hand, it proclaims that the enumerated "categories of information are specifically made public information."

The Council can clear up this ambiguity in one of two ways. First, it might simply add the word "disclosure" after the word "other" and before the word "sections", so that the meaning of the "other disclosure sections" will not be limited, but the withholding sections will be limited to the extent that otherwise excepted information will have to be disclosed whenever it falls within a category of information enumerated in Section 6.

The second possibility, which the Committee favors, would be to replace the word "made" with the phrase "declared to be", and to add a comma after the words "public information", and to thereafter add the words "except in extraordinary circumstances where an exception from disclosure applies and the policy reasons for the exception clearly outweigh the public interest in disclosure in the particular case." Under the latter alternative, present Section 6 spells out certain information which should be made available to the public on a routine basis. While the exceptions from mandatory disclosure (*e.g.*, clearly unwarranted invasions of personal privacy) found in present Section 5 (renumbered by us as Section 8) still may pertain to portions of a public record in some unique circumstances, this listing represents a legislative judgment that these types of records seldom, if ever, will be excepted from disclosure. Moreover, by the very terms of our proposed exception 4 (certain inter- and intra-public body communications), that exception can never protect from disclosure information falling within Section 6. This provision should reduce delays, reduce the need for litigation, and clarify for members of the public their rights to this information.

Whichever alternative is adopted, certain other clarifying amendments are necessary. The reference to "adjudication" in subsection (3) is somewhat ambiguous. The provision was taken from the Federal Freedom of Information Act, 5 U.S.C. § 552(a)(2)(A), which used the definition of adjudication given in the Federal Administrative Procedure Act, 5 U.S.C. § 551(7). However, the D.C. Administrative Procedure Act, D.C. Code § 1-1501 *et seq.*, does not define the term. Under the Federal APA, adjudication "means agency process for the formulation of an order." 5 U.S.C. § 552(7). "Order" is defined almost identically in both the Federal and D.C. APA's. *Compare* 5 U.S.C. § 551(6) *with* D.C. Code § 1-1502(11). Thus, the Council should amend section 3(a) of Bill 1-119, which amends D.C. Code § 1-1502, to add the same definition of "adjudication" quoted above from the Federal APA. Alternatively, the Council might consider replacing the term "adjudication of cases" in subsection (3) of Section 6 (Bill 1-119) with the term "contested case" which is defined in D.C. Code § 1-1502(B). The term "contested case", unlike "adjudication", encompasses certain actions of the Council. On the other hand, the opinions resulting from "contested cases", which is generally limited to those involving formal hearings, are far fewer than those resulting from any "adjudication" as defined above.

The meaning of subsection (5) of Section 6 is unclear, and so the Committee recommends that the subsection be either deleted (and renumbered accordingly) or redrafted in more precise terms to better convey the Council's purpose. In subsection (6), the Committee recommends that the words "opines" and "opine" be replaced with the words "states an opinion" and "state an opinion", which have the same meanings but which are more commonly used. In the last line of subsection (6), the word "of" should apparently be "or".

The Committee further recommends that for purposes of clarification the words "of each member of each public body" be inserted after the word "votes" in subsection (8). In addition, "a public body" should be inserted in lieu of "the Mayor and an agency" in subsections (1), (4), and (6); "public body" should be inserted in lieu of "agency" both times that "agency" appears in the third line of subsection (6); and "public bodies" should be inserted in lieu of "agencies" in subsection (8). We also note that if the section requiring the recording of final votes is inserted as a new Section 6, as we have recommended, then this section should be renumbered as 7.

One more addition to present Section 6 is advisable. We recommend the addition of a new subsection (9) to read as follows:

(9) facts, analysis or evaluation of facts, or summaries of facts.

This is intended to make clear that expert and other professional reports should generally be made available to the public, and, most importantly, that such essentially factual materials can never be withheld under the proposed exception for certain types of internal communications (exception (4)). Any category of information enumerated in present Section 6 is excluded from exception (4) by the explicit terms of exception (4) itself. This subsection should insure that all factual or evaluative materials, but not all policy recommendations, which are considered by government decisionmakers will be made available to the public so that the quality of those decisions may be properly evaluated. By doing so, the Council records its disapproval of the result under the Federal Act in the case of *Montrose Chemical Co. v. Environmental Protection Agency*, 491 F.2d 63 (D.C. Cir. 1974).

The Committee further recommends that the Council consider the inclusion of a subsection that would require public bodies to index all information which must be made public under subsections (2), (3), (4), and (6) of Section 6. The Federal Freedom of Information Act now requires indexing of the equivalent information (5 U.S.C. § 552(a)(2)). Final opinions, and other legal determinations, are the very type of information which the Supreme Court recently referred to as "secret law", which along with policy statements must generally be disclosed. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 153 (1975). Indexing is necessary to insure that the public has ready knowledge of the existence of legal and policy decisions affecting the public, whether or not the public body actually uses those determinations as precedent. On the other hand, such a requirement is not without its costs in money and manpower. Hence, the Council should weigh these costs in determining the extent and type of indexing to be required. Moreover, the Committee recommends that the Council consider the adoption of a related provision from section 552(a)(2) of the Federal Information Act which provides that:

A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by agency only if—

(i) it has been indexed and either made available or published...; or

(ii) the party has actual and timely notice of the terms thereof.

VII. SECTION 7: ENFORCEMENT

As noted in connection with Section 5 above, we believe that the rights and duties created by this Bill would be more easily understood if Section 5 were interchanged with the present Section 7 and if this Section 7 were renumbered as Section 5. Also for the sake of clarity, the Committee recommends that the title of this Section—"Enforcement"—be amended to read "Administrative Appeals and Enforcement". Further, the Committee assumes that the first and second sentences of subsection (A) of section 7 have been unintentionally run together, and that the beginning of the second sentence has been omitted. The Committee infers from the text that the two sentences were meant to include words to the following effect: "If the Corporation Counsel denies the petition,.". We recommend that those words be added. As previously, we recommend that all references to the "mayor or agencies" be changed to the "public body".

As clarified, subsection (A) allows persons denied access to seek administrative review of that denial from the Corporation Council. If the Corporation Counsel agrees with the public body that the information should be withheld, requesters then can proceed to court on their own if they still believe the records should be disclosed. The intent of the last sentence of subsection (A) is to provide that if the Corporation Counsel declares that the records are subject to mandatory disclosure, then the Corporation Counsel has the responsibility of insuring that the records are released. The Corporation Counsel would be given the specific authority to go to court to force the public body to disclose the records in question. Unfortunately, if read literally, that is not what subsection (A) says. The problem is that in the last sentence as assumed distinction is made between a "record" and a "public record", which, as the latter term is defined in Section 3(A), simply does not exist. The distinction which is intended to be made is one between a "public record" and a "public record which may not be withheld", so that when the Corporation Counsel determines that a "public record" "may not be withheld", he or she must take steps to force the disclosure of it. In this way, a citizen wrongfully denied access need hire no lawyer, need incur no court expenses, and yet has a practical means of vindication.

Another problem with subsection (A) is that, as presently written, it does not explicitly give the requester authority to pursue enforcement of the request if he is dissatisfied with the Corporation Counsel's handling of the matter. The right of an individual to handle his own case whether or not the Corporation Counsel agrees that disclosure is required should be made clear. However, the option of relying on the Corporation Counsel to seek enforcement, when the Corporation Counsel has decided that the requested information must be disclosed, should be retained. Further, a requester should have an absolute right to intervene at any time in any proceedings initiated by the Corporation Counsel on the requester's behalf.

Additionally, the Committee recommends that definite statutory time limits be imposed on the Corporation Counsel by this subsection. Following the denial by a public body of a request for records, the requester can submit a petition for review. We believe that twenty days (excluding Saturdays, Sundays and legal holidays) is a more than sufficient period of time to allow full consideration of, and a final

response to, the petition. *See* 5 U.S.C. § 552(a)(6)(A)(ii). Should the Corporation Counsel agree that disclosure is required, and the public body fail to make the records immediately available for public inspection, then, upon request from the person seeking the information, the Corporation Counsel should be required to initiate a judicial proceeding against that public body within ten days (excluding Saturdays, Sundays and legal holidays) of the receipt of the request to sue.

Once again, to make the Bill as clear as possible, the words "trial court" should be stricken, and replaced by the words "Superior Court of the District of Columbia". Finally, the word "records" in the last line of subsection (A) should be "record", and the words "document" and "documents" should be replaced by the broader term "record" and "the record", respectively. Subsection (A), with other minor grammatical and numbering changes, should read as follows:

(A) Any person denied the right to inspect a public record of a public body may petition the Corporation Counsel to review the public record to determine whether it may be withheld from public inspection. This determination shall be made within 20 days (excluding Saturdays, Sundays and legal holidays) of the submission of the petition.

(1) If the Corporation Counsel denies the petition, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Corporation Counsel decides that the record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record. Alternatively, said person may demand that the Corporation Counsel bring suit in the name of the District of Columbia in the Superior Court for the District of Columbia for the same purposes. The Corporation Counsel shall bring suit within 10 days (excluding Saturdays, Sundays and legal holidays) of the request. The requester shall have an absolute right to intervene as a full party in said suit at any time.

Subsection (B) of present Section 7 contains an explicit grant of jurisdiction to the "court", and provides that there shall be *de novo* review, that the burden of proof shall be on the public body seeking to sustain the denial of access, that *in camera* inspection of the records sought will be permitted, and that noncompliance with a court order shall be punishable by contempt. *De novo* review assures that the court is not limited in anyway by prior actions of the agency, and that it will make its own determination of facts and law independently of what occurred on the administrative level. The provision that the court in its discretion may review in chambers any records whose disclosure is sought is necessary, because the requester often does not have sufficient knowledge of the contents of records to disprove the government's assertions of confidentiality without independent court review of those records. In view of this handicap to the person seeking disclosure, we recommend that the Council ex-

PLICITLY provide that, in the discretion of the court, plaintiff, his attorney, and necessary expert witnesses may view the records sought, subject to necessary protective orders. Moreover, all briefs, affidavits and other court papers, as well as oral arguments, should be open to the public unless all parties agree to closed sessions and the court makes a written finding that extraordinary circumstances require closed proceedings and that such closed proceedings are in the public interest. In no event should closed proceedings be held unless all parties and counsel are present. Closed proceedings should be extremely rare. Thus, the period at the end of the next to the last sentence in subsection (B) should be changed to a comma, and the following words added :

and other persons, including the requester, counsel and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders. Upon motion and consent of all parties, if the court makes a written finding that extraordinary circumstances require the proceedings, or portions thereof, to be closed to the general public and that such closed proceedings are in the public interest, the court may order that proceedings be held in the presence of all parties and counsel at which the general public is excluded.

Only with the addition of this provision can the American system of adversarial proceedings be effective in freedom of information cases.

Three technical amendments to subsection (B) are also required. First, when the word "court" appears in the first sentence it should be replaced with the more descriptive words "Superior Court for the District of Columbia". Second, in accordance with our suggested renumbering, "section 7(A)" in the first sentence of subsection (B) should be changed to "section 5(A)". Third, when the word "documents" appears in the next to last sentence, it should be replaced with the broader term "records".

Subsection (C) provides for the expedition of court review by the requirement that suits under the statute take precedence over other matters on the court's docket, so that the value of eventual disclosure will not be destroyed by judicial delays. For the sake of clarity, we recommend that the word "causes" be changed to "cases" both times that it appears, and that the language, "including appeals," be added after the word "Act" and before the word "take".

Subsection (D) provides that if a person is forced to go to court, and wholly prevails, the government, not the citizen, shall pay the full expenses of the litigation. In cases where the requestor only partially prevails, a reasonable attorney fee award, or portion thereof, is left to the discretion of the court. In no case should attorney fees be awarded to the Corporation Counsel, for such intra-government transfers would simply add to the costs of such suits with no appreciable public benefit. Should a requester intervene, however, he would be eligible for such fees.

The Committee feels that this cost shifting scheme is an important provision that encourages self-enforcement on the part of public bodies. Freedom of Information cases rarely, if ever, result in financial gain to the person who sues. By providing for the award of attorney fees, citizens are encouraged to seek the release of information wrongfully withheld. The mandatory award of attorney fees where

a person wholly prevails should further this end, and should act to inhibit public bodies from forcing citizens to go to court except when there are legitimate reasons for nondisclosure. Full expenses should also be paid in most cases where a requester substantially, but not wholly, prevails. Of course, a requester will have wholly prevailed when an agency voluntarily discloses the requested records as a result of the bringing of the lawsuit, even though the court has not ordered disclosure.

VIII. SECTION 8: PENALTIES

This section establishes the personal accountability of persons responsible for implementing the statute. The Committee generally supports the concept of holding officials personally accountable for their actions, and some type of sanction against egregious violations appears to be the most effective way of insuring such accountability. The 1974 amendments to the Federal Freedom of Information Act included a provision for initiating sanctions proceedings against recalcitrant employees and officials, and a number of states have enacted freedom of information statutes which include direct penalty provisions that are quite stringent. *See* S. Rep. No. 93-854, 93d Cong., 2d Sess. 63-64 (1974) (list of 15 states with sanctions provisions in their public records acts). The Committee feels that, on balance, the salutary effects of such a provision outweigh the dangers that such a provision will make it more difficult for public employees to carry out their public responsibilities. *Cf. Barr v. Matteo*, 360 U.S. 564 (1959).

However, a sanctions provision could take several different forms, and none should be adopted without close legislation scrutiny. In fact, the sanctions provision in Bill 1-119 is not without problems:

(1) Under Section 8 of Bill 1-119, a court may impose a \$1,000 fine on any official who violates the Act. Apparently even an innocent mistake on a difficult question of law concerning whether a record is expected from mandatory disclosure could result in a fine. We believe that this sanctions provision goes too far, and that reasonable mistakes should be excused. The Federal Act presently requires courts to ask whether agency personnel acted "arbitrarily or capriciously" (5 U.S.C. § 552(A)(4)(F)). However, that standard of individual wilfulness involves difficult questions concerning an official's "state of mind", and unduly limits the circumstances allowing for the imposition of sanctions. The Committee feels that there ought to be strong incentives for employees to seek legal advice in doubtful cases, and that sanctions should apply to egregious cases whether or not the employee intended to flout the law. The Committee recommends that the Council adopt a standard that asks whether any official or public employee has acted "without a reasonable basis in law". Such a standard insures that honest, reasonable mistakes will be excused, but that those who either wilfully thwart the purpose of the Act or act in inexcusable ignorance of the Act's provisions will be subject to sanctions. Public officials must have a reasonable basis in law for their actions.

(2) It should also be made clear that no official should be fined or otherwise penalized without regard to ordinary standards of procedural due process. Therefore, the first word of the sentence, "Any", should be preceded by the words "Upon motion, notice and hearing, . . ."

(3) All government employees, not just District of Columbia "officials", should be subject to the sanctions provision. Thus, the words "or employee" should be added after the words "Any official" and before "who violates" in Section 8.

(4) Section 8 provides for a court-imposed \$1,000 fine. This is similar to the Indiana statute which provides that an offender who violates the terms of its freedom of information law is guilty of a misdemeanor, and may be fined up to \$500 or be sentenced to jail for a term of up to 30 days, or both, Burns Ind. Stat. Anno., ch. 6, tit. 57, § 606 (1970 Supp.). Florida law also provides for criminal penalties, and in addition subjects violators to possible removal or impeachment. Fla. Stat. Ann. ch. 119, 8.02 (1972). By contrast, the Federal Act provides that court will merely determine whether the circumstances of the withholding raise questions as to whether agency personnel acted arbitrarily or capriciously. 5 U.S.C. § 552(a)(4)(F). Once such a judicial determination has been made, the Civil Service Commission must investigate and recommend a remedy. The actual implementation of these recommendations is left to the administrative authority involved. The Committee recommends that the question of what sanction should be imposed on violators should be answered only after the alternatives have been more fully explored in public hearings.

Incorporating the above suggestions, and assuming that the monetary sanction is retained (and that renumbering is necessary because of the addition of new section 6), the amended version of this section would read as follows:

Sec. 9. Penalties. Upon motion, notice and hearing, any public official or employee who withholds records or denies a request for records without a reasonable basis in law shall be subject to a \$1,000 fine for each offense.

IX. NEW SECTION: LETTERS OF DENIAL

Before considering the present section 9, the Committee recommends the addition of a new section (to be numbered 10, if our previous recommendations are accepted, and the present §§ 9 and 10 would be numbered as §§ 11 and 12), which would require: (a) that every letter of denial contain (1) the reason(s) for the denial, (2) the name of the public official or employee responsible for determining that a denial was warranted, and (3) a notification to the requester of his or her right of appeal pursuant to present § 7(A) (§ 5(A) if our suggested renumbering is adopted) of this Act; and (b) that each public body keep a file of all letters of denial that it sends to a requester of public records from that public body.

Our recommended new section 10(A) is presently required by § 2(b) of Commissioner's Order 71-370, excepting only that the Order does not require that each denial name the official who actually makes the decision to deny. The naming of such official is, however, required under a 1974 amendment to the Federal Freedom of Information Act, 5 U.S.C. § 552(a)(6)(C). The Committee feels that this requirement will increase the care with which the responsible official makes each determination, and will also be useful should the sanctions provision be invoked. Section 10(B) is also presently required by Commissioner's Order No. 71-370, § 2(b), and is, in any event, a good record-

keeping practice. Complying with such a provision should not add any significant burden upon public bodies, and will allow determinations to be made as to whether there has been an inordinate number of denials within any particular public body. Additionally, the provision will permit the Council to assess the impact and efficacy of this Act. The following language might be added to accomplish the above:

Sec. 10. Letters of Denial:

(A) Denial by a public body of a request for public records from that public body shall contain at least the following:

(1) the specific reasons for the denial, including citations to the particular exception(s) under section 8 of this Act relied on as authority for the denial;

(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) notification to the requester of any administrative or judicial right to appeal under section 5(A) of this Act.

(B) Each public body of the District of Columbia shall maintain a file of all letters of denial of requests for public records from that public body. This file shall be made available to any person on request.

Additionally, the Council should consider the possibility of including a specific reporting provision, such as was included in 1974 amendments to the Federal Freedom of Information Act, 5 U.S.C. § 552(d), requiring all public bodies to report annually such information as the total number of denials, the exceptions relied upon for those denials (*e.g.*, exception 1, fourteen times, exception 2, nineteen times, and so forth), and the fees assessed under the Act. Whether the benefits of such a procedure outweigh the expenses to the District of Columbia Government can only be determined through additional studies and hearings.

X. SECTION 9: (CODIFICATION AND REPEALER)

In addition to renumbering this as Section 11, the letters (a) and (b) should be replaced with the capital letters (A) and (B) to make the lettering in this section consistent with the rest of the Act. The Committee recommends that the words "Codification and Repealer" be adopted as the title of this Section.

One substantive amendment is essential: the Committee recommends inserting an additional sentence under subsection (b): "All laws of the District of Columbia that are inconsistent with this Act are to the extent of the inconsistency hereby repealed." This insures that all questions of disclosure or non-disclosure will be determined solely with respect to this statute, and thus will be easily accessible to all members of the public.

XI. SECTION 10: (EFFECTIVE DATE)

This section merely reserves to Congress the right to disapprove this Act by concurrent resolution within 30 days from the date it is transmitted to the Speaker of the House and the President of the Senate. If, as we suggest, the Council adopts our proposed sections "6" and "10" and renumbers the present sections accordingly, then this section "10" should be renumbered as "12". Furthermore, the Committee recommends that the words "Effective Date" be adopted as the title of this section.

APPENDIX A

(21 D.C. Reg. 3608 (June 13, 1975))

No. 1-119

In the Council of the District of Columbia

JUNE 10, 1975.

Councilmember Arrington Dixon introduced the following Bill which was referred to the Committee on Judiciary and Criminal Law.

A Bill to create a Freedom of Information Act; to create rights and penalties; and for other purposes

Be it enacted by the Council of the District of Columbia, That this Act may be cited as the "Freedom of Information Act of 1975."

SEC. 2. Public Policy. It is hereby declared to be the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, the provisions of this Act shall be construed in every instance with the view toward complete public access.

SEC. 3(A). Section 1-1502 of the District of Columbia Code is hereby amended by inserting the following after final";" in Section 13: "(14) the term 'public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies."

(B) Section 1-1502 of the District of Columbia Code is hereby amended by striking "(14)", "(15)", and "(16)", and inserting "(15)", "(16)", and "(17)", in lieu thereof respectively.

SEC. 4. Access to Public Records from the Mayor and Agencies—

(A) Any person has a right to inspect or copy any public record of the Mayor or an agency, except otherwise expressly provided by Section 5 (exemptions) of this Act in accordance with reasonable rules concerning time and place of access.

(B) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. But fees shall not be charged for examination and review to determine if such documents are subject to disclosure.

(C) The Mayor or an agency, upon request for records made under this Act, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the Mayor or an agency as to the public availability of the requested public record.

SEC. 5. Exemptions—

(A) The following matters may be exempt from disclosure under the provisions of this Act :

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(3) Records of law enforcement agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by :

(a) disclosing identity of informants not otherwise known ;

(b) the premature release of information to be used in a prospective law enforcement action ;

(c) disclosing investigatory techniques not otherwise known outside the government ;

(d) deprive a person of a right to a fair trial or an impartial adjudication ;

(e) constitute an unwarranted invasion of personal privacy ;

(f) endanger the life or safety of a law enforcement officer.

SEC. 6. Information Which Must be Public. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information :

(1) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency ;

(2) administrative staff manuals and instructions to staff that affect a member of the public ;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases ;

(4) those statements of policy and interpretations of policy, Acts, and rules which have been adopted by the Mayor or an agency ;

(5) planning policies and goals, and interim and final planning decisions ;

(6) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the District, the public, of any private party ;

(7) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies ;

(8) the minutes of all proceedings of all agencies and all votes at such proceedings.

SEC. 7. Enforcement—

(A) Any person denied the right to inspect a public record of the Mayor or an agency may petition the Corporation Counsel to review the public record to determine if it may be withheld from public inspection, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the trial court. If the Corporation Counsel declares the document to be a public record and the government body continues to withhold the record, the Corporation Counsel shall bring suit in the name of the District of Columbia in the trial court to enjoin the agency from withholding the records and to compel the production of documents for the person seeking disclosure.

(B) In any suit filed under section 7(A) of this Act, the court has jurisdiction to enjoin the Mayor or an agency from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter *de novo* and the burden is on the Mayor or an agency to sustain its action. The court may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(C) Except as to causes the court considers of greater importance, proceedings arising under Section 7(A) of this Act take precedence on the docket over all other causes and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he or she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him or her reasonable attorney fees or an appropriate portion thereof.

SEC. 8. PENALTIES.—Any official who violates the provisions of this Act shall be subject to \$1,000 fine for each offense.

SEC. 9(a) This Act shall be codified in Chapter 15 of Title 1 of the District of Columbia Code, as Section 1-1511.

(b) Commissioner's Order No. 71-370, issued November 2, 1971, is hereby repealed.

SEC. 10. This Act shall take effect pursuant to the provisions of Sec. 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

APPENDIX B

Commissioner's Order No. 71-370

NOVEMBER 2, 1971.

Subject: Availability of Official Information for Public Disclosure.
Originating Agency: Executive Secretary, D.C.

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

Commissioner's Order No. 299.207/1 of December 27, 1935, as amended by Order of the Commissioner No. 68-211 of March 19, 1968, is hereby repealed and the following policies shall govern the availability for disclosure by agencies of the Government of the District

of Columbia of official information and records requested by the general public.

SEC. 1. DEFINITIONS.—For the purposes of this Order, the following definitions shall apply:

(a) "Agency" means an office, department, division, board, commission, or other entity of the Government of the District of Columbia under the administrative authority of the Commissioner of the District of Columbia.

(b) "Available" means keeping the record or a duplicate thereof open for inspection and copying during the normal business hours of the agency.

(c) "Categorical request" means any request for all records falling within a reasonably specific category which conforms to the definition of "identified records."

(d) "Identified records" means any reasonably specific description of the records sought which will enable an agency employee to locate the requested records and would include the general subject matter of the records, and the title and dates of the records, if known.

(e) "Person" means any member of the general public, besides persons legally authorized by other than this Order, whether an individual, partnership, association, corporation, or public or private organization.

(f) "Public disclosure" means available to any member of the general public besides persons legally authorized by other than this Order.

(g) "Records" means any books, papers, maps, photographs or other documentary material, regardless of physical form or characteristics, made or received by an agency of the Government of the District of Columbia in connection with the transaction of public business, and preserved, or appropriate for preservation by that agency or its successor as evidence of its organization, functions, decisions, policies, procedures, operations, or other activities of the District Government or because of the informational value of data contained therein. However, the term shall not include the compiling or processing of a record not in existence, or not in the possession or control of the agency, nor shall it include objects or articles such as intangible exhibits, models, and other structures or equipment.

SEC. 2. (a) GENERAL AVAILABILITY OF GOVERNMENT RECORDS.—Upon written request by any person for identified records, the agency of the District Government to which the request is directed shall, not later than within ten working days, make such records available. Should the agency require additional time to produce the records, it shall acknowledge the request in writing within such ten-day period, stating therein the reason for the delay and indicating the date on which the records shall be available. Grounds for delay beyond the ten-day period are: the requested records are stored in whole or part at locations other than the office having charge of the records; the request requires the collection of a substantial number of specified records; the requested records have not been located in the course of a routine search and additional efforts are required to locate them; the requested records require examination and evaluation by personnel

having the necessary competence and discretion to determine if they are exempt from disclosure by section (3) (a) of this Order, or can be revealed only with appropriate deletions as provided for under section (3) (a).

(b) If the records requested are unavailable for disclosure under one of the categories of Section (3) (a), the agency may deny the request, but in such case it shall provide a written denial to the person requesting the records within ten working days, stating the reason for the denial and shall inform such person of the review procedures provided by section 5 of this Order. The knowledge and responsibility of the head of the agency denying the request shall be implied in every written denial. Each agency of the District Government shall maintain a file of all letters of denial of that agency which shall be made available on request.

(c) Each agency shall establish reasonable procedures to carry out this Order, including designation of the place or places at which requests may be made and publication of the fee structure for duplicating records and for processing categorical requests. A request form may be provided but its use may not be required. Any written request which conforms to the definition of "identified records" in section (1) (d) shall be sufficient under this Order.

SEC. 3. RECORDS WHICH MAY BE WITHHELD FROM PUBLIC DISCLOSURE.—

(a) The following records may be withheld from public disclosure:

- (1) records specifically exempted from disclosure by law;
- (2) records in files whose release would result in a clearly unwarranted invasion of personal privacy, except when identifying references, such as names and addresses, are deleted;

(3) records in investigatory and inspection files compiled for law enforcement purposes, except to the extent available by law to a party other than an agency;

(4) records of commercial or financial information obtained from a person under an agreement of confidentiality; and

(5) records of inter-agency or intra-agency communications which would not be available by law to a party other than an agency in litigation with the agency, except that all outside consultant reports shall be made available within a reasonable period of time, not to exceed one year, from their issuance, and further, that all guidelines, instructions or procedures issued to governmental personnel for the administration of any public law, regulation or Order shall not be considered inter-agency or intra-agency communications under this Order.

(b) Any of the records listed in subsection (a), except for records listed in paragraph (1), may be made available by the agency or reviewing body if said agency or reviewing body determines that no unreasonable interference with personal privacy or effective governmental operations shall result. Nothing in this Order shall authorize the withholding of information or limit the availability of records to members of Congress to any legally authorized governmental agency or person.

SEC. 4. PUBLIC INFORMATION REVIEW BOARD.—

(a) A Public Information Review Board is hereby established to administer and supervise this Order and to review delays and denials

of information by the agencies involved. The Review Board shall be comprised of the following members: (1) the Public Affairs Officer of the District of Columbia or his representative, (2) the Corporation Counsel of the District of Columbia or his representative, (3) the Director of the Office of Planning and Management or his representative, and (4) two representatives appointed by the Commissioner of the District of Columbia who shall represent the public. The public representatives may not be employees of the District of Columbia and shall serve a three-year term of office. The Executive Secretary of the District of Columbia shall be a non-voting member of the Review Board, except that he may cast a vote to break a tie, and he shall chair the meetings of the Board.

(b) The Executive Secretary of the District of Columbia shall furnish staff assistance to the Review Board, and shall convene and preside over its meetings and maintain records of its proceedings. Three members of the Review Board shall constitute a quorum. Three days' notice shall be given to each Board member before each and every meeting of the Board.

(c) The Review Board shall have the following powers and responsibilities:

(1) to review all appeals from denials of access to agency records; and

(2) to review all complaints about violations of time limits set out in section 2 of this Order. If the Review Board finds the complaint justified, it shall order the agency to supply the records or to issue an official denial immediately. A report of the failure or refusal of an agency to comply with an order of the Review Board shall be forwarded to the Commissioner for appropriate action.

SEC. 5. REVIEW OF DENIALS OF PUBLIC ACCESS TO GOVERNMENT RECORDS.—Any person denied access to Government records by an agency may appeal to the Review Board established by Section 4 of this Order by filing, within thirty days of such denial, a request for review, in writing, with the Executive Secretary. The Board shall be convened within twenty working days from the time a written appeal is received by the Executive Secretary. The Board is authorized to review the facts and rationale behind the agency action, including review of the records in question, and shall determine whether the agency decision represents a proper interpretation and application of this Order. If the Board, after its review, determines that the agency in question improperly interpreted or applied provisions of this Order, the Board shall so notify the Commissioner of the District of Columbia who may issue a directive to the agency ordering it to make available the records in question. The decision of the Review Board shall be sent in writing to the person making the appeal within ten days after the Board convenes to consider the appeal. A copy of all decisions of the Review Board shall be kept on file by the Executive Secretary and shall be available to any person on request.

SEC. 6. EFFECTIVE DATE.—The provisions of this Order shall take effect 30 days after the date of this Order.

WALTER E. WASHINGTON,
Commissioner of the District of Columbia.

APPENDIX C

(Bill 1-119 with Committee's Proposed Amendments)

A BILL To create a Freedom of Information Act ; to create rights and penalties ; and for other purposes

Be it enacted by the Council of the District of Columbia, That this Act may be cited as the "Freedom of Information Act of 1976".

SEC. 2. Public Policy. It is hereby declared to be the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, the provisions of this Act shall be construed in every instance with the view toward complete public access, and the minimization of costs and time delays to persons requesting information.

SEC. 3(A). Section 1-1502 of the District of Columbia Code is hereby amended by inserting the following after the final ";" in Section 13:

(14) the term "public body" includes: (A) every officer, agency, department, division, bureau, board, or body in the executive branch of the Government of the District of Columbia; (B) every officer, board, commission, council, or committee in the legislative branch of the Government of the District of Columbia; and (C) every officer, judge, court, board, department, commission, council or agency in the judicial branch of the Government of the District of Columbia;

(15) the term "public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body;

(16) "adjudication" means agency process for the formulation of an order.

(B) Section 1-1502 of the District of Columbia Code is hereby amended by striking "(14)", "(15)", and "(16)", and inserting "(17)", "(18)", and "(19)", in lieu thereof respectively.

SEC. 4. Right of Access to Public Records; Allowable Costs; Time Limits—

(A) Any person has a right to inspect and, at his or her discretion, to copy any public record of a public body, except as otherwise expressly provided by Section 8 (exceptions) of this Act, in accordance with reasonable rules that may be issued after notice and comment by a public body concerning time and place of access.

(B) The public body, upon request for public records made under this Act, shall within fifteen days (excepting Saturdays, Sundays, and legal holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record. Any failure on the part of a public body to comply with a request under subsection (A) within the time provisions of this subsection shall be deemed a denial of the request.

(C) The public body may establish and collect fees not to exceed the actual, direct cost of searching for or making copies of public records. But fees shall not be charged for examination and review to determine if such public records, or portions of public records, are subject to disclosure. Public records shall be furnished without charge or at a reduced charge when furnishing the information can be considered as primarily benefiting the general public.

SEC. 5. Administrative Appeals and Enforcement—

(A) Any person denied the right to inspect a public record of a public body may petition the Corporation Counsel to review the public record to determine whether it may be withheld from public inspection. This determination shall be made within 20 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Corporation Counsel denies the petition, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Corporation Counsel decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record. Alternatively, said person may demand that the Corporation Counsel bring suit in the name of the District of Columbia in the Superior Court for the District of Columbia for the same purposes. The Corporation Counsel shall bring suit within 10 days (excluding Saturdays, Sundays, and legal holidays) of the request. The requester shall have an absolute right to intervene as a full party in said suit at any time.

(B) In any suit filed under section 5(A) of this Act, the Superior Court for the District of Columbia has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter *de novo* and the burden is on the public body to sustain its action. The court may view the records in controversy *in camera* before reaching a decision, and other persons, including the requester, counsel and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders. Upon motion and consent of all parties, if the court makes a written finding that extraordinary circumstances require the proceedings, or portions thereof, to be closed to the general public and that such closed proceedings are in the public interest, the court may order that proceedings be held in the presence of all parties and counsel at which the general public is excluded. Any noncompliance with the order of the court may be punished as contempt of court.

(C) Except as to cases the court considers of greater importance, proceedings arising under section 5(A) of this Act, including appeals, take precedence on the docket over all other cases and

shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he or she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him or her reasonable attorney fees or an appropriate portion thereof.

SEC. 6. Recording of Final Votes. Each public body having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that public body.

SEC. 7. Information Which Must Be Public. Without limiting the meaning of other sections of this Act, the following categories of information are specifically declared to be public information, except in extraordinary circumstances where an exception from disclosure applies and the policy reasons for that exception clearly outweigh the public interest in disclosure in the particular case:

(1) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of a public body;

(2) administrative staff manuals and instructions to staff that affect a member of the public;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) those statements of policy and interpretations of policy Acts, and rules which have been adopted by a public body;

(5) correspondence and materials referred to therein, by and with a public body relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) the minutes of all proceedings of all public bodies and all votes of each member of each public body at such proceedings;

(8) facts, analysis or evaluation of facts, or summaries of facts.

SEC. 8 Exceptions from Mandatory Disclosure—

(A) The following matters may be withheld from disclosure under the provisions of this Act, but these exceptions from mandatory disclosure only permit, and never require, withholding by a public body:

(1) Confidential commercial or financial information to the extent that disclosure would:

(a) result in substantial and unfair competitive injury to the submitter of that information to a public body, if the submitter has specifically requested that the information not be made public, or, if submitted prior to the effective date of this Act, such a request is reasonably to be implied from the circumstances of the submission; or

(b) lead to serious, undue, financial speculations in currencies, securities, or commodities.

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(3) Public records of law enforcement agencies that were compiled as part of an investigation for law enforcement purposes, if the disclosure of the information would harm the agency by:

(a) disclosing the identity of informants not generally known outside the government;

(b) the premature release of information to be used in a prospective law enforcement action;

(c) disclosing investigatory techniques not generally known outside the government;

(d) depriving a person of a right to a fair trial or an impartial adjudication;

(e) endangering the life or safety of a law enforcement officer.

(4) Inter-public body and intra-public body communications, but only to the extent that they do not fall within Section 6, involving

(a) deliberations among judges concerning prospective judicial decisions;

(b) information routinely protected by the attorney work-product or attorney-client privileges; and

(c) recommendations made by advisers on policy-making, adjudicatory, rule-making, or judicial decisions, Provided that this subsection shall not protect from disclosure inter-public body communications between any two or three branches of the District of Columbia Government as defined in subsections (A), (B), and (C) of Section 3 of this Act.

(5) Test questions and answers to be used in future license employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

(B) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (A).

(C) No public record shall be withheld for any reason other than those that are specifically enumerated in subsection (A).

SEC. 9. Penalties. Upon motion, notice and hearing, any public official or employee who withholds records or denies a request for records without a reasonable basis in law shall be subject to a \$1000 fine for each offense.

SEC. 10. Letters of Denial—

(A) Denial by a public body of a request for public records from that public body shall contain at least the following:

(1) the specific reasons for the denial, including citations to the particular exception(s) under section 8 of this Act relied on as authority for the denial;

(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny request; and

(3) notification to the requester of any administrative or judicial right to appeal under section 5(A) of this Act.

(B) Each public body of the District of Columbia shall maintain a file of all letters of denial of requests for public records from that public body. This file shall be made available to any person on request.

SEC. 11(A). Codification and Repealer. This Act shall be codified in Chapter 15 of Title 1 of the District of Columbia Code, as Section 1-1511.

(B) Commissioner's Order No. 71-370, issued November 2, 1971, is hereby repealed. All laws of the District of Columbia that are inconsistent with this Act are to the extent of the inconsistency hereby repealed.

SEC. 12. Effective Date. This Act shall take effect pursuant to the provisions of Sec. 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

Appendix D

No. 1-119

In the Council of the District of Columbia

A Bill to create a Freedom of Information Act; to create rights and penalties; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this Act may be cited as the "Freedom of Information Act of 1975."

Sec. 2. Public Policy. It is hereby declared to be the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, the provisions of this Act shall be construed in every instance with the view toward complete public access.

Sec. 3(A). Section 1-1502 of the District of Columbia Code is hereby amended by inserting the following after the final ";" in Section 13:

"(14) the term 'public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies."

(B) Section 1-1502 of the District of Columbia Code is hereby amended by striking "(14)", "(15)", and "(16)", and inserting "(15)", "(16)", and "(17)", in lieu thereof respectively.

Sec. 4. Access to Public Records from the Mayor and Agencies.

(A) Any person has a right to inspect or copy any public record of the Mayor or an agency, except otherwise expressly provided by Section 5 (exceptions) of this Act in accordance with reasonable rules concerning time and place of access.

Bill 1-119 with Committee's
Proposed Amendments

A Bill to create a Freedom of Information Act; to create rights and penalties; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this Act may be cited as the "Freedom of Information Act of 1976".

Sec. 2. Public Policy. It is hereby declared to be the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, the provisions of this Act shall be construed in every instance with the view toward complete public access, and the minimization of costs and time delays to persons requesting information.

Sec. 3(A). Section 1-1502 of the District of Columbia Code is hereby amended by inserting the following after the final ";" in Section 13:

(14) the term "public body" includes:
(A) every officer, agency, department, division, bureau, board, or body in the executive branch of the Government of the District of Columbia; (B) every officer, board, commission, council, or committee in the legislative branch of the Government of the District of Columbia; and (C) every officer, judge, court, board, department, commission, council or agency in the judicial branch of the Government of the District of Columbia;
(15) the term "public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body;
(16) "adjudication" means agency process for the formulation of an order.

(B) Section 1-1502 of the District of Columbia Code is hereby amended by striking "(14)", "(15)", and "(16)", and inserting "(17)", "(18)", and "(19)", in lieu thereof respectively.

Sec. 4. Right of Access to Public Records; Allowable Costs; Time Limits.

(A) Any person has a right to inspect and, at his or her discretion, to copy any public record of a public body, except as otherwise expressly provided by Section 8 (exceptions) of this Act, in accordance with reasonable rules that may be issued after notice and comment by a public body concerning time and place of access.

(B) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. But fees shall not be charged for examination and review to determine if such documents are subject to disclosure.

(C) The Mayor or an agency, upon request for records made under this Act, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the Mayor or an agency as to the public availability of the requested public record.

Sec. 5. Exemptions.

(A) The following matters may be exempt from disclosure under the provisions of this Act:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(C) The public body may establish and collect fees not to exceed the actual, direct cost of searching for or making copies of public records. But fees shall not be charged for examination and review to determine if such public records, or portions of public records, are subject to disclosure. Public records shall be furnished without charge or at a reduced charge when furnishing the information can be considered as primarily benefiting the general public.

(B) The public body, upon request for public records made under this Act, shall within fifteen days (excepting Saturdays, Sundays, and legal holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record. Any failure on the part of a public body to comply with a request under subsection (A) within the time provisions of this subsection shall be deemed a denial of the request.

Sec. 8. Exceptions from Mandatory Disclosure.

(A) The following matters may be withheld from disclosure under the provisions of this Act, but these exceptions from mandatory disclosure only permit, and never require, withholding by a public body:

(1) Confidential commercial or financial information to the extent that disclosure would:

- (a) result in substantial and unfair competitive injury to the submitter of that information to a public body, if the submitter has specifically requested that the information not be made public, or, if submitted prior to the effective date of this Act, such a request is reasonably to be implied from the circumstances of the submission; or
- (b) lead to serious, undue, financial speculations in currencies, securities, or commodities.

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(3) Records of law enforcement agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

a. disclosing identity of informants not otherwise known;

b. the premature release of information to be used in a prospective law enforcement action;

c. disclosing investigatory techniques not otherwise known outside the government;

d. deprive a person of a right to a fair trial or an impartial adjudication;

e. constitute an unwarranted invasion of personal privacy;

f. endanger the life or safety of a law enforcement officer.

(3) Public records of law enforcement agencies that were compiled as part of an investigation for law enforcement purposes, if the disclosure of the information would harm the agency by:

(a) disclosing the identity of informants not generally known outside the government;

(b) the premature release of information to be used in a prospective law enforcement action;

(c) disclosing investigatory techniques not generally known outside the government;

(d) depriving a person of a right to a fair trial or an impartial adjudication;

(e) endangering the life or safety of a law enforcement officer.

(4) Inter-public body and intra-public body communications, but only to the extent that they do not fall within Section 6, involving:

(a) deliberations among judges concerning prospective judicial decisions;

(b) information routinely protected by the attorney work-product or attorney-client privileges; and

(c) recommendations made by advisers on policymaking, adjudicatory, rule-making, or judicial decisions.

Provided that this subsection shall not protect from disclosure inter-public body communications between any two or three branches of the District of Columbia Government as defined in subsections (A), (B), and (C) of Section 3 of this Act.

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

(B) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (A).

(C) No public record shall be withheld for any reason other than those that are specifically enumerated in subsection (A).

- 4 -

Sec. 6. Information Which Must Be Public. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

- (1) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;
- (2) administrative staff manuals and instructions to staff that affect a member of the public;
- (3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (4) those statements of policy and interpretations of policy, Acts, and rules which have been adopted by the Mayor or an agency;
- (5) planning policies and goals, and interim and final planning decisions;
- (6) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the District, the public, of any private party;
- (7) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
- (8) the minutes of all proceedings of all agencies and all votes at such proceedings.

Sec. 7. Information Which Must Be Public. Without limiting the meaning of other sections of this Act, the following categories of information are specifically declared to be public information, except in extraordinary circumstances where an exception from disclosure applies and the policy reasons for that exception clearly outweigh the public interest in disclosure in the particular case:

- (1) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of a public body;
- (2) administrative staff manuals and instructions to staff that affect a member of the public;
- (3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (4) those statements of policy and interpretations of policy, Acts, and rules which have been adopted by a public body;
- (5) correspondence and materials referred to therein, by and with a public body relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;
- (6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
- (7) the minutes of all proceedings of all public bodies and all votes of each member of each public body at such proceedings;
- (8) facts, analysis or evaluation of facts, or summaries of facts.

Sec. 7. Enforcement.

(A) Any person denied the right to inspect a public record of the Mayor or an agency may petition the Corporation Counsel to review the public record to determine if it may be withheld from public inspection, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the trial court. If the Corporation Counsel declares the document to be a public record and the government body continues to withhold the record, the Corporation Counsel shall bring suit in the name of the District of Columbia in the trial court to enjoin the agency from withholding the records and to compel the production of documents for the person seeking disclosure.

(B) In any suit filed under section 7(A) of this Act, the court has jurisdiction to enjoin the Mayor or an agency from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the Mayor or an agency to sustain its action. The court may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

Sec. 5. Administrative Appeals and Enforcement.

(A) Any person denied the right to inspect a public record of a public body may petition the Corporation Counsel to review the public record to determine whether it may be withheld from public inspection. This determination shall be made within 20 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Corporation Counsel denies the petition, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Corporation Counsel decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record. Alternatively, said person may demand that the Corporation Counsel bring suit in the name of the District of Columbia in the Superior Court for the District of Columbia for the same purposes. The Corporation Counsel shall bring suit within 10 days (excluding Saturdays, Sundays, and legal holidays) of the request. The requester shall have an absolute right to intervene as a full party in said suit at any time.

(B) In any suit filed under section 5(A) of this Act, the Superior Court for the District of Columbia has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and other persons, including the requester, counsel and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders. Upon motion and consent of all parties, if the court makes a written finding that extraordinary circumstances require the proceedings, or portions thereof, to be closed to the general public and that such closed proceedings are in the public interest, the court may order that proceedings be held in the presence of all parties and counsel at which the general public is excluded. Any noncompliance with the order of the court may be punished as contempt of court.

(C) Except as to causes the court considers of greater importance, proceedings arising under Section 7(A) of this Act take precedence on the docket over all other causes and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he or she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him or her reasonable attorney fees or an appropriate portion thereof.

Sec. 8. Penalties. Any official who violates the provisions of this Act shall be subject to \$1,000 fine for each offense.

Sec. 9(a) This Act shall be codified in Chapter 15 of Title 1 of the District of Columbia Code, as Section 1-1511.

(h) Commissioner's Order No. 71-370, issued November 2, 1971, is hereby repealed.

Sec. 10. This Act shall take effect pursuant to the provisions of Sec. 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

(C) Except as to cases the court considers of greater importance, proceedings arising under section 5(A) of this Act, including appeals, take precedence on the docket over all other cases and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he or she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him or her reasonable attorney fees or an appropriate portion thereof.

Sec. 6. Recording of Final Votes. Each public body having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that public body.

Sec. 9. Penalties. Upon motion, notice and hearing, any public official or employee who withholds records or denies a request for records without a reasonable basis in law shall be subject to a \$1000 fine for each offense.

Sec. 10. Letters of Denial.

(A) Denial by a public body of a request for public records from that public body shall contain at least the following:

- (1) the specific reasons for the denial, including citations to the particular exemption(s) under section 8 of this Act relied on as authority for the denial;
- (2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and
- (3) notification to the requester of any administrative or judicial right to appeal under section 5(A) of this Act.

(B) Each public body of the District of Columbia shall maintain a file of all letters of denial of requests for public records from that public body. This file shall be made available to any person on request.

Sec. 11(A). Codification and Repealer. This Act shall be codified in Chapter 15 of Title 1 of the District of Columbia Code, as Section 1-1511.

(B) Commissioner's Order No. 71-370, issued November 2, 1971, is hereby repealed. All laws of the District of Columbia that are inconsistent with this Act are to the extent of the inconsistency hereby repealed.

Sec. 12. Effective Date. This Act shall take effect pursuant to the provisions of Sec. 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

TESTIMONY OF TED PRAHINSKI, FREEDOM OF INFORMATION AND PRIVACY ACTS

Privacy Act:

1. Add new subparagraph to section (4) :

() use the social security number or any variation thereof as an identifying number for an individual, except where required by Federal Law. Where Federal Law requires such use, the agency shall not disclose the social security number in any publicly available record, or license, permit, identifying card, letter, or any other document which the individual would disclose to law enforcement officers or members of the public.

2. Modify Section 4(g) to delete the interlined material and add the bracketed material :

(g) collect no personal information concerning ~~the~~ [any] political or religious beliefs or affiliations ~~of any sort~~ [not involving advocacy of violations of law or the change of the form of government of the United States by unconstitutional means.]

Freedom of Information Act :

1. Add to definition of 'Public Record' in Section 3(A) :

[but does not include formulae, designs, drawings, research data, computer programs, technical data packages, and so forth, which have commercial value as property].

2. Use exemptions from Federal Act.

Both Acts: Delete Penal Provisions.

COMMON CAUSE TESTIMONY ON THE FREEDOM OF INFORMATION ACT OF 1976, BILL 1-119, BY MAUREEN LIMPert, BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA'S COMMITTEE ON JUDICIARY AND CRIMINAL LAW, JANUARY 28, 1976

Good evening. My name is Maureen Limpert, and I am testifying tonight on behalf of Common Cause of the District of Columbia, on "The Freedom of Information Act of 1976," Bill 1-119. With me is Bill Garetz, also a Common Cause member, who will testify on "The Privacy Act of 1976."

Common Cause is a national citizens' lobby devoted to the cause of open and responsive government. Common Cause/D.C. works for similar goals on the local government level and has approximately 5,400 members in Washington.

I would like to express my appreciation to the Committee for the opportunity to present the views of Common Cause on this important legislation. We support a freedom of information act as an essential law in this age of complex government. In the press of daily business, it's easy for municipal employees at every level to lose sight of the fact that they work for the public—and must be accountable to it. Bill 1-119; with some additions that I will suggest, would help open up the government to the people it's designed to serve.

The proposed law declares that the policy of D.C. shall be that all persons are entitled to full and complete information about their gov-

ernment and the official acts of public officials and employees. Section 2 of the bill directs that the law be interpreted with the view toward complete public access to Government information.

Section 3, subsection A, requires the mayor and the agencies to provide this access for the public. The legislation rightly does not limit disclosure only to those documents that the Government is legally required to keep, but includes all books, papers, maps, photographs, cards, tapes, etc., owned, used, possessed or retained by the mayor and the agencies.

However, we feel that the law is unduly limited by not requiring the City Council and its committees to likewise respond to public requests for information. The Washington taxpayer and voter has a strong and important interest in the affairs of the legislative, as well as the executive branch of the Government. Common Cause/D.C. suggests that the Council and its committees, the school board, and any other board, commission, or public body that is primarily funded by the city, be placed under the provisions of this bill.

Section 4 is the meat of the proposed law. It gives the citizen the right to inspect or copy public records, but leaves the Government the prerogative of designating time, place, and procedure under which requests should be made. Common Cause strongly supports the subsection C requiring the mayor and the agencies to respond to requests for information within 15 days. Delay is a popular tactic of officials trying to stymie public access to records.

Section 5 lists several exemptions to the Act. Trade secrets, certain personal information, and some documents of law enforcement agencies do not have to be disclosed. However, Common Cause/D.C. would like to suggest an amendment that would require the Government to release the non-exempt portions of a document that contains both exempt and non-exempt material. For instance, if a paper refers to an individual and the disclosure of the document would clearly constitute an unwarranted invasion of privacy, then that record should not be disclosed. However, if the name of the individual and other identifying details can be extracted, the document could then be made available. Similarly, if a paper contains a trade secret, the part with the trade secret should be removed, if possible, and the remainder of the record made available.

Most freedom of information laws contain an exemption for records deemed confidential by other statutes. The Committee may want to consider adding this exemption.

Section 6 lists certain information, such as policy statements and minutes of meetings, which 1-119 would specifically make public. We interpret this to mean that these documents are automatically open to inspection by the public without going through the request procedure.

Section 7 sets out the enforcement procedure for this law. It gives the citizen two choices when the Government refuses to release information: 1) he or she can petition the Corporation Counsel 2) seek relief in the courts. We propose that this subsection be amended so that a citizen petitions the Corporation Counsel first, and then if the petition is denied there, he or she has the option of seeking judicial review. We also suggest that the Corporation Counsel be required to respond to the petition within 15 days. Thus the citizen would have an administrative remedy available to him that could save court expenses. When

an agency denies the inspection of a record, it should notify the citizen, in writing, of his right to appeal, and specify what the appeal procedure is. A 15 day time limit in the Corporation Counsel's office prevents unnecessary delay there.

Section 8 says that any official violating the Act will be subject to a fine of \$1,000 for each offense. Withholding information from the public calls into question the fitness of the official involved for public trust responsibilities. Respect for the citizenry and for the law are qualities that should exist in government officials in an even greater degree than in industry executives or the public at large. Therefore, we would suggest suspension or removal from office as more fitting penalties for knowing and willful violations of the Freedom of Information Act.

With the additions I have suggested, Bill 1-119 would do much to insure a government that is the servant of the people, rather than the master of them. Thank you for the opportunity of testifying. I will be happy to answer any questions the Committee might have.

DISTRICT OF COLUMBIA,
PUBLIC INTEREST RESEARCH GROUP, INC.,
Washington, D.C., September 10, 1975.

GREG MIZE,
Counsel, Committee on Judiciary and Criminal Law, District of Columbia Counsel.

DEAR GREG: I'm sorry this has taken so long to get to you.
As I told you on the phone our research will consist of:

(1) Requesting information, both general and sensitive, from the D.C. government.

(2) Compiling cost and effectiveness information from states that have freedom of information laws.

(3) Combining our experiences on these other areas with a legal analysis of the proposed legislation.

I'll be contacting you soon about the first meeting date.

I look forward to hearing from you.

BOB FISHER.

OCTOBER 22, 1975.

MS. KATHERINE GRAHAM,
*Publisher, Washington Post,
Washington, D.C.*

DEAR MS. GRAHAM: The Committee on the Judiciary and Criminal Law is currently reviewing Bill #1-119, a copy of which is enclosed

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
*Chairman, Committee on the
Judiciary and Criminal Law.*

Enclosure.

OCTOBER 22, 1975.

Mr. JOSEPH ALBRITTON,
Publisher, Washington Star,
Washington, D.C.

DEAR MR. ALBRITTON: The Committee on the Judiciary and Criminal Law is currently reviewing Bill #1-119, a copy of which is enclosed.

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
Chairman, Committee on the
Judiciary and Criminal Law.

Enclosure.

OCTOBER 22, 1975.

FOIA CLEARINGHOUSE,
Washington, D.C.

DEAR PEOPLE: The Committee on the Judiciary and Criminal Law is currently reviewing Bill #1-119, a copy of which is enclosed.

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
Chairman, Committee on the
Judiciary and Criminal Law.

Enclosure.

OCTOBER 22, 1975.

Mr. ART CARTER,
Publisher, Washington Afro-American,
Washington, D.C.

DEAR MR. CARTER: The Committee on the Judiciary and Criminal Law is currently reviewing Bill #1-119, a copy of which is enclosed.

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
Chairman, Committee on the
Judiciary and Criminal Law.

Enclosure.

OCTOBER 22, 1975.

Mr. WILLIAM BROWN,
President, National Press Club,
Washington, D.C.

DEAR MR. BROWN: The Committee on the Judiciary and Criminal Law is currently reviewing Bill #1-119, a copy of which is enclosed.

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
*Chairman, Committee on the
Judiciary and Criminal Law.*

Enclosure.

OCTOBER 22, 1975.

Ms. PEGGY SIMPSON,
*President, Washington Press Club,
Washington, D.C.*

DEAR Ms. SIMPSON: The Committee on the Judiciary and Criminal Law is currently reviewing Bill #1-119, a copy of which is enclosed.

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
*Chairman, Committee on the
Judiciary and Criminal Law.*

Enclosure.

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., October 24, 1975.

Mr. RICH ADAMS,
*WTOP Broadcast House,
Washington, D.C.*

DEAR Mr. ADAMS: The Committee on the Judiciary and Criminal Law is currently analyzing Bill #1-119, a copy of which is enclosed.

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
*Chairman, Committee on the
Judiciary and Criminal Law.*

Enclosure.

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., October 24, 1975.

Mr. RICHARD L. HURLBUT,
Chief, Tuition Branch,

D.C. Public Schools, Presidential Building, Washington, D.C.

DEAR Mr. HURLBUT: The Committee on the Judiciary and Criminal Law is currently analyzing Bill #1-119, a copy of which is enclosed.

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
*Chairman, Committee on the
Judiciary and Criminal Law.*

Enclosure

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., October 31, 1975.

REPORTER'S COMMISSION FOR FREEDOM OF THE PRESS,
Washington, D.C.
 (Attention: Jack Landau).

DEAR MR. LANDAU: The Committee on the Judiciary and Criminal Law is currently reviewing Bill #1-119, a copy of which is enclosed.

I would very much appreciate your reviewing this bill and sending us your comments, criticisms and/or suggestions for use by the Committee.

Very truly yours,

DAVID A. CLARKE,
*Chairman, Committee on the
 Judiciary and Criminal Law.*

Enclosure.

AMERICAN CIVIL LIBERTIES UNION
 OF THE NATIONAL CAPITAL AREA,
Washington, D.C., November 4, 1975.

HON. DAVID A. CLARKE,
*Chairperson, Committee on the Judiciary and Criminal Law, Council
 of the District of Columbia, Washington, D.C.*

Re: Freedom of Information Act Bill No. 1-119

DEAR MR. CLARKE: I have been asked by the Legislative Committee of the American Civil Liberties Union of the National Capital Area to inform you that, as you requested, it has reviewed the proposed Freedom of Information Act, Bill 1-119, and hopes to forward you and other members of the Committee on the Judiciary and Criminal Law its comments, criticisms and suggestions within the next few weeks.

Sincerely,

DIANA H. JOSEPHSON,
Executive Director.

AMERICAN CIVIL LIBERTIES UNION
 OF THE NATIONAL CAPITAL AREA,
Washington, D.C., December 1, 1975.

HON. DAVID A. CLARKE,
*Chairperson, Committee on the Judiciary and Criminal Law, Council
 of the District of Columbia, Washington, D.C.*

Re: Bill No. 1-119 Proposed Freedom of Information Act

DEAR MR. CLARKE: In accordance with my November 4, 1975, letter, I now transmit to you the comments of the American Civil Liberties Union of the National Capital Area (the ACLU-NCA) on the above bill, in response to your August 12, 1975, letter referring the bill to us for comment.

We plan to present oral testimony when the bill comes to hearing before the Committee. As the attached comments indicate, we have some suggestions to make in the way of modifications of the bill, but we warmly support it in principle and hope that it will shortly receive favorable Council consideration and action.

If we can be of further help in connection with your Committee's consideration of the bill, please call upon me.

Thank you.

Sincerely,

DIANA H. JOSEPHSON,
Executive Director.

COUNCIL OF THE DISTRICT OF COLUMBIA

MEMORANDUM

To: Members of the Council.

From: Arrington Dixon, Chairperson, Committee on Government Operations.

Date: July 23, 1975.

Subject: Committee Comments on Bill No. 1-119, "The Freedom of Information Act of 1975."

Attached are proposed comments on Bill No. 1-119, "The Freedom of Information Act of 1975." This bill was referred to the Committee on the Judiciary with comment from the Committee on Government Operations. The Comments that are attached are intended to be transmitted to the Committee on the Judiciary as the comments of the Committee on Government Operations, adopted at a regular meeting on July 23, 1975.

Motion: Dixon, Barry: To adopt the Committee Report and file the comments with the Council.

Carried.

Attachment.

COMMENTS OF THE COMMITTEE ON GOVERNMENT OPERATIONS WITH REGARD TO BILL NO. 1-119, "THE FREEDOM OF INFORMATION ACT OF 1975"

SECTION-BY-SECTION ANALYSIS

Section 2 of the Bill states the Public Policy that the Bill is intended to promote. This public policy is that all persons are entitled to full and complete information regarding the affairs of government and of the official acts of those who represent them as public officials.

Section 3 of the Bill adds a definition of "public records" to the definitions set out in the Administrative Procedure Act of the District of Columbia, Chapter 15, Title 1, District of Columbia Code.

Section 4 of the Bill grants all persons the right to inspect or copy public records maintained by the Mayor or by an agency of the District of Columbia that are not exempted by Section 5 of the Bill. Section 4(A) provides that the records shall be available for inspection or copying in accordance with reasonable rules concerning time and place of access. Section 4(B) allows the Mayor or agency providing records to collect fees in the amount of the costs of searching for and copying requested records. Fees may be waived or reduced where the information requested primarily benefits the general public. Section 4(C) requires that the Mayor or agency act upon all requests for information within fifteen days.

Section 5 of the Bill exempts certain matters from disclosure. Trade secrets, information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and

records of law enforcement agencies compiled in the process of detecting and investigating crime would be exempted. Law enforcement records would be exempt only if disclosure would harm the agency involved by disclosing the identity of an informant, prematurely releasing information to be used in a law enforcement action, disclosing confidential investigatory techniques, depriving a person of the right to a fair and impartial trial, causing an unwarranted invasion of personal privacy, or endangering the life and safety of a law enforcement officer.

Section 6 of the Bill requires that certain information be made public as a matter of public policy. This information includes specified information relating to employees and officers of the Mayor and of agencies, administrative staff manuals and instructions to staff, all opinions in the adjudication of cases, rules and statements of policy adopted by the Mayor or by agencies, planning policies and goals and decisions, correspondence regarding the rights of the District of Columbia, the public, or private parties, information relating to contracts dealing with the expenditure of public funds, and the minutes of all agency proceedings.

Section 7 of the Bill outlines enforcement procedures. Section 7(A) provides that persons who have been denied the right to inspect records may petition the Corporation Counsel to determine whether the record has been properly withheld. If the Corporation Counsel denies such a petition, access to the courts is assured. If the Corporation Counsel declares that the records should be disclosed and the Mayor or the agency refuses to disclose it, Corporation Counsel can bring suit to compel production. Section 7(B) provides that the Court shall review all information matters de novo and that the Mayor or the agency has the burden of sustaining its decision to withhold information. Section 7(C) provides for the speedy resolution of cases brought under the Act by giving them priority over other matters before the Court. Section 7(D) allows persons bringing actions under the Act to recover attorney fees and other costs of litigation.

Section 8 of the Bill provides that officials who violate the Act shall be subject to a fine of \$1000 for each offense.

Section 9 of the Bill would codify the Act in the Administrative Procedure Act of the District of Columbia and would repeal Commissioner's Order No. 71-370, "Availability of Official Information for Public Disclosure."

Evaluation

The Freedom of Information Act of 1975 creates the right of any person to inspect or copy any document in the possession of the Mayor or an agency of the District of Columbia. The Act assures that the right of access extends to all documents in governmental possession and not solely to those documents required by law to be maintained by the government. The Act begins from the premise that openness in government serves the public interest and from the further premise that members of the public have the right to know what government officials are doing. Section 2 and Section 4 of the Act embody these premises in providing that the Act should be construed "with the view toward complete public access" and that "any person has a right to inspect or copy any public record of the Mayor or an agency."

The Act, however, also recognizes that the Mayor and agencies of the government must be given some flexibility in the handling of requests for information. Government officials are therefore granted the authority to establish reasonable rules to control the time, place and procedures by which requests shall be made. See Section 4(A). Similarly, the government is allowed a fifteen day period within which to respond to requests for information. Section 4(C) of the Act, in providing officials with a fifteen day response time, recognizes the difficulties that officials may have in locating and assembling information requested and in determining whether the information sought is appropriate for release.¹

Though attempting to assure access to documents in the possession of the government of the District of Columbia, the Act does not assume that taxpayers should bear the costs of all requests for information under the Act. The Act provides that the Mayor or an agency of the government may establish and collect fees that will defray the costs of searching for any copying records. See Section 4(B) of the Act. Individuals and groups that utilize the Act to obtain information thus bear the costs of locating and copying documents. This provision contemplates minimizing the cost of administering the Act. The government, however, and not the requester, must bear the costs of reaching a policy decision of whether or not to release documents. See Section 4(C) of the Act.

The Act does not intend that fees be assessed for all requests for information. Where "the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public," documents may be furnished without charge or at a reduced fee. See Section 4(B) of the Act. The Mayor and agencies of the government are therefore granted discretion to determine what is "primarily benefitting the general public." The Act intends that the Mayor and the agencies make good faith determinations of whether public payment should be made for essentially public benefits. Commissioner's Order No. 71-370 contains no provision relevant to fee assessment, but the Federal Freedom of Information Act contains a provision similar to the one in Section 4(B) of the instant Act. See 5 USC 552(a)(4)(A).

The Freedom of Information Act of 1975 recognizes that the Mayor and the agencies of the District of Columbia have a valid governmental interest in maintaining confidentiality in certain areas. Section 5 of the Act specifically enumerates various types of information that the government need not disclose. The governmental need to protect certain business information results in an exemption for trade secrets. The right of individuals to be free from unwarranted invasions of personal privacy results in an exemption for disclosures of a personal nature that would amount to a "clearly unwarranted" invasion of privacy. The need of law enforcement agencies to be protected from disclosures that would harm their law enforcement efforts results in an exemption for records of law enforcement agencies compiled in the process of detecting and investigating crime. The exemption of the records of law enforcement agencies, however, is not so broad as to

¹ The fifteen day response period that the Act provides is an increase over the ten day period allowed in the Federal Freedom of Information Act, 5 USC 552(a)(6)(A)(i) and in Commissioner's Order No. 71-370 (Sec. 2(a)).

exempt all such records. Only records that would infringe upon law enforcement activities or infringe upon the rights of persons who are the objects of law enforcement activities are exempt. Thus law enforcement agency records are exempt from the Act only "if the disclosure of the information would harm the agency by:

- a. disclosing identity of informants not otherwise known;
- b. the premature release of information to be used in a prospective law enforcement action;
- c. disclosing investigatory techniques not otherwise known outside the government;
- d. deprive a person of a right to a fair trial or an impartial adjudication;
- e. constitute an unwarranted invasion of personal privacy;
- f. endanger the life or safety of a law enforcement officer."

Exemptions granted to "records of commercial or financial information obtained from a person under an agreement of confidentiality" and to "records of inter-agency or intra-agency communications which would not be available by law to a party other than an agency in litigation with the agency. . ." as provided in Commissioner's Order No. 71-370 are excluded since they contradict the stated public policy of the Act and are subject to frequent and simple abuse. See Commissioner's Order No. 71-370, Section 3(a) (4), (5).

While particular information is exempted under Section 5 of the Act as discussed above, other information is deemed to be public in all instances. Section 6 of the Act specifies particular types of information that shall be considered public as a matter of public policy. These types of information are related to the operational dimensions of the government and include basic data with regard to employees and officers in the District government, administrative staff manuals and instructions to staff that affect the public, opinions in all adjudications, statements of planning policies and goals and decisions, official correspondence relevant to determining the rights of the District, the public, or private parties, information regarding contracts involving public monies or expenditures, and the minutes to all agency meetings. Information falling within the purview of this section is conclusively public in nature. It is therefore unnecessary to go through the process of determining whether they should be disclosed. If a document falls within these specified areas, it should be disclosed without question.

Persons denied the right to inspect public records that they request must have some recourse. Section 7 of the Act provides that such persons may petition the Corporation Counsel to review the record sought and to determine whether the record may be withheld. If the Corporation Counsel denies the petition, the Superior Court of the District of Columbia has jurisdiction to determine a matter brought to it by the aggrieved person. If the Corporation Counsel declares that the document is a public record that should be disclosed and the Mayor or the agency fails to disclose, Corporation Counsel may bring suit to enjoin the withholding of the document. Section 7 also provides that the burden of proof in actions brought under the Act is upon the government and that such actions shall be given priority on the dockets of the courts. The Act therefore provides adequate mechanisms for administering and enforcing its provisions and for assuring that right of the public to obtain information regarding the affairs of government and

the actions of those persons who represent the public. Provisions in Section 7 will expedite the enforcement of the Act and free the courts from prior actions of agencies and determinations by the Corporation Counsel. Provisions in Section 7(D) encourage citizens to seek the release of information wrongfully withheld by providing the awards of attorney fees.

The Committee on Government Operations concludes that the Freedom of Information Act of 1975 as proposed can obtain a portion of the goal of creating open government in the District of Columbia. The Committee recommends adoption of the Act.²

D.C.-44
May 1967

MEMORANDUM—GOVERNMENT OF THE DISTRICT OF COLUMBIA

To: David A. Clarke, Esquire, Chairman, Committee on the Judiciary and Criminal Law.

From: C. Francis Murphy, Corporation Counsel, D.C.

Date: December 19, 1975.

Subject: Review of Bill 1-119.

In response to your request of August 12, 1975, for comments and suggestions with respect to Bill 1-119, relating to "Freedom of Information", I am enclosing a copy of a memorandum which addresses most of the substantive issues raised by the provisions of this legislative proposal.

Enclosure.

D.C.-44
May 1967

MEMORANDUM—GOVERNMENT OF THE DISTRICT OF COLUMBIA

To: Judith W. Rogers, Special Assistant for Legislation.

From: C. Francis Murphy, Corporation Counsel, D.C.

Date: December 19, 1975.

Subject: Review of Bill No. 1-119—To create a Freedom of Information Act; to create rights and penalties, and for other purposes.

In accordance with your request I have reviewed the proposed bill and find that it contains gross deficiencies. In reviewing this bill I have considered the provisions of the Federal Freedom of Information Act (5 U.S.C. § 552) and Commissioner's Order No. 71-370, dated November 2, 1971, a type of freedom of information act under which the District has been operating since late 1971.

(1) The proposed bill fails to include significant exemptions—

(a) For instance, C.O. 71-370 exempts "records specifically exempted from disclosure by law", but the proposed bill contains no such exemption. Therefore, if the proposed bill were enacted in its present form, juvenile records, for instance, now exempt from

² The Committee has noted a typographical error in the Act that should be corrected prior to adoption. At line 19 of page 4 of the Act (Section 7(A)), there should be the following corrections: a period should be inserted after the word "inspection" and the comma that now appears should be stricken; the words "If Corporation Counsel denies the petition," should be added after the period and before the word "the."

public disclosure, would be subject to disclosure. D.C. Code § 16-2334.

(b) The proposed bill should include an exemption for "records of commercial or financial information obtained from a person under an agreement of confidentiality." Without such an exemption, parties dealing with District officials in financial matters which are of a confidential business nature would be hesitant to disclose such information to District officials.

(c) The proposed bill should include an exemption for:

"records of inter-agency or intra-agency communications which would not be available by law to a party other than an agency in litigation with the agency, except that all outside consultant reports shall be made available within a reasonable period of time, not to exceed one year, from their issuance, and, further, that all guidelines, instructions, or procedures issued to governmental personnel for the administration of any public law, regulation, or order shall not be considered inter-agency or intra-agency communication under this act."

Absent such an exemption, written communications of a policy nature between employees of an agency or of several agencies are likely to be reduced or significantly stifled because of the possibility of public disclosure of their contents. Free and frank communications on such subjects between District employees should not be discouraged or stifled.

(d) The proposed bill should include a provision exempting from public disclosure "investigatory records compiled for law enforcement purposes", similar to that contained in the Federal statute at 5 U.S.C. § 552(b)(7). Section 5(A)(3) of the proposed act is insufficiently broad to include "investigative" records and limits nondisclosure only if the "disclosure of the information would harm the agency." No consideration is given as to whether the divulged information may be harmful to the individual. I would recommend that the provision contained in the Federal law be followed in this respect.

(2) The proposed bill fails to specify that requests for public information may be denied where the requests are so unspecific as to burden the government agency involved in complying with the request. Lack of such specificity could result in private individuals, groups, or organizations conducting massive fishing expeditions for government information which may or may not be relevant.

(3) If the proposed bill were modeled more closely to the Federal provisions governing freedom of information, the District could rely upon Federal court decisions construing the Federal act, thus, providing a substantial mass of interpretive law relative to the principles of freedom of information.

(4) The proposed bill authorizes the Corporation Counsel to bring suit against any agency which fails to release any record or document which he determines to be withheld contrary to the provisions of the bill. As a result of this provision the Corporation Counsel is faced with the very real possibility of having to go into court to sue either the Mayor, an executive agency, or the Council of the District of Columbia to force them to release the withheld information and, in the same

case, defending the action as legal representative of the Mayor or agency.

(5) Section 7(c) of the proposed bill requires the courts of the District of Columbia to give precedence on their dockets to suits brought to enforce the provisions of this bill. By the provisions of 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act, the Council is restricted from interfering with the organization or jurisdiction of the judicial system.

(6) The proposed bill provides for criminal fines of up to \$1,000 for violations of its provisions, but it is silent with respect to the possibility of administrative or disciplinary sanctions against District employees who violate the provisions of the bill. Such sanctions might be preferable in certain cases to a mere money fine, and would provide greater flexibility to the Executive Branch in enforcement of its provisions.

Since these recommendations suggest a wholesale redrafting of the above-reference bill, I have not commented on other minor substantive and grammatical changes which are obvious on its face.

WASHINGTON, D.C., January 14, 1976.

DAVID CLARK, Esq.,

Chairperson, Committee on Judiciary and Criminal Law, District of Columbia Council, Washington, D.C.

Re: Comments on Bill 1-119

DEAR MR. CLARK: On behalf of the Committee on Access to Government Information of the Administrative Law Division (I) of the District of Columbia Bar (Unified), I wish to submit for the Council's consideration the enclosed comments on Bill 1-119, a proposed Freedom of Information Act for the District of Columbia. The Access Committee adopted these comments on December 29, 1975, and on January 13, 1976, the D.C. Bar Board of Governors authorized their submission.

In its recommendations the Access Committee has taken a balanced view, generally commenting favorably on the provisions of Bill 1-119 while urging many technical drafting alterations and suggesting that the Bill should be patterned even more closely after the Federal Freedom of Information Act. The two most significant recommendations made by the Committee are that: 1) the exceptions from mandatory disclosure should be broadened to give more protection to confidential commercial information, intra-governmental communications, investigative records, and examination questions and answers; and 2) the D.C. Council should seriously explore in its hearings the advisability of expanding the proposed act to cover at least in some degree the records of the judicial and legislative branches of the District Government.

I have been scheduled to speak on behalf of the Committee at the Council's hearings on January 28, 1978. If I can be of any assistance to the Council, either prior to or after the hearings, please contact me at the above address.

Respectfully yours,

LARRY P. ELLSWORTH,
*Chairperson, Committee on Access
to Government Information.*

C&P TELEPHONE,
Washington, D.C., January 15, 1976.

Councilmember DAVID CLARKE,
D.C. City Council, Washington, D.C.

DEAR COUNCILMEMBER CLARKE: Pursuant to our meeting in your office on December 15, 1975, this letter outlines the specific concerns of C & P Telephone Company with some aspects of the current language of the "Freedom of Information Act of 1975," Bill No. 1-119. Specifically, Bill No. 1-119 presently contains no exemption, under Section 5 of this bill, for the protection of confidential commercial or financial information.

The Company addressed its concerns to the author of the bill, Councilmember Dixon, on July 22, 1975, but the letter was received after the Committee on Government Operations had prepared its comments. Since the concerns of the Company have yet to be considered by any committee, we address our comments on this bill to your Committee, which is scheduled to hold hearings on Bill No. 1-119 on January 28, 1976.

It is well recognized that courts must treat confidential commercial or financial information in a manner consistent with a qualified privilege. This treatment by the courts is the same as the treatment for trade secrets. In the notes of the Advisory Committee to the Supreme Court on the proposed Federal Rules of Evidence, the committee noted, with the approval of the Supreme Court, that a qualified right to protection against disclosure trade secrets has found ample recognition and it noted further that "a denial of it would be difficult to defend." *Comments of Advisory Committee to draft of Supreme Court Federal Rules of Evidence, Rule 508.*

While it would not be a beneficial use of your time and the time of your staff to provide exhaustive citations which demonstrate the customary treatment of confidential commercial and financial information by the courts, the courts have repeatedly held that because such material involved substantial interest, it deserved protection. For, *e.g.*, *National Parks & Conservation Ass'n v. Morton*, 162 U.S. App. D.C. 223, 498 F.2d 765 (1974); *Sterling Drug Inc. v. FTC*, 146 U.S. App. D.C. 237, 450 F.2d 698 (1971); *Boeing Airplane Co. v. Coggeshall*, 108 U.S. App. D.C. 106, 280 F.2d 654 (1960); *United States ex rel Norwegian Nitrogen Products Co., Inc. v. United States Tariff Commission*, 55 App. D.C. 366, 6 F.2d 491 (1925); Fed. R. Civ. P. 26(c) (7); Super. Ct. Civ. R. 26(c) (7).

Under compulsion of law, the Company regularly submits confidential material to the Public Service Commission of the District of Columbia (P.S.C.) in proceedings before that agency. The P.S.C., however, is authorized under current law to withhold such information from general public scrutiny and to provide controlled access to those parties participating in that particular proceeding before the Commission. This authority is identical in scope and practice to the authority of the courts to protect the same material. *See* Fed. R. Civ. P. 26(c) (7); Super. Ct. Civ. R. 26(c) (7). Under the terms of Bill No. 1-119, the P.S.C. will no longer possess this basic authority to conduct its proceedings in a manner similar to a court.

It is well known, and cannot be doubted, that the P.S.C. functions in the same manner as most federal regulatory agencies. It adheres,

therefore, to many of the principles to which courts and those federal regulatory agencies adhere. The Supreme Court stated that regulatory agencies must have the flexibility to meet a rapidly changing field. *F.C.C. v. Schreiber*, 381 U.S. 279 (1965). The statement of the Court in *Schreiber* is particularly significant because the Court faced a challenge to the treatment of confidential commercial and financial information by the F.C.C. The Court approved of the regulations established by the F.C.C. for the protection of financial and commercial information. The P.S.C. follows similar procedures, which procedures, we submit, would be abrogated by the failure of Bill No. 1-119 to provide an exemption for confidential commercial or financial information.

While the Company submits this confidential material to the PSC under compulsion of law, it does not waive its claim of proprietary treatment. *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974). Because the law compels the submission of this information, this Committee should not be concerned that any amendment, as we propose herein, would restrict in any manner the availability of this information for the P.S.C. The concern of this Committee should be, we believe, to assess the delicate balance between the rights of the citizens to unencumbered access to public records of their government and the rights of a corporate citizen to protect certain proprietary and confidential commercial and financial information from unlimited and uncontrolled scrutiny. Upon careful consideration we believe the balance will weigh decidedly in favor of the qualified protection of this information.

The Company emphasizes that it is not against the Freedom of Information Act of 1975. It supports the purposes of the bill. Nonetheless, the Company is concerned about the uninhibited access of the public, including the competitors of the Company, to the information which it submits under compulsion of law to the P.S.C. The Company adheres, and will continue to adhere, to the lawful orders of the P.S.C. in these matters.

The Company, however, wishes to invite the attention of the committee to the irony of the impact of this bill as it is currently written. Under P.S.C. D.C. Rule 7.1, a party may intervene before the P.S.C. if it has "substantial interest." Presumably, if a competitor sought to intervene, the P.S.C. would permit such intervention because the competitor possessed a substantial interest in the proceedings. Currently, a competitor-intervenor would have limited and specific access to this confidential information in order to present its position before the P.S.C. Assuming, *arguendo*, the language of Bill 1-119 left intact the power of the P.S.C. (which we believed would be abrogated by this bill) to protect in designated manner the confidential commercial and financial information of the Company, a competitor would never intervene before the P.S.C. because it could obtain the information it desired without any justification of the need for the request under the provisions of Bill 1-119. The irony is that the same competitor could not unconditionally obtain that very same information as an intervenor before the P.S.C.

In consideration of the foregoing, the Company vigorously urges the Committee, and the Council, to adopt an amendment to Section 5 of Bill 1-119. The Company believes the best solution is to adopt the lan-

guage of 5 U.S.C. Section 552(b) (4), the Federal Freedom of Information Act. This language is as follows: "Trade secrets and commercial or financial information obtained from a person and privileged or confidential." The benefits of this amendment are that there will be uniformity of language for both citizens and corporations to follow and the judicial construction of the Federal act will be applicable to the language of the D.C. act.

Should the Committee and thereafter the Council have a rational legislative interest in delineating a distinction between the language of the Federal and District of Columbia Statutes, we suggest that the Committee adopt a more recent definition of trade secrets than that presently contained in Bill 1-119. We suggest the language of 4 *Restatement of Torts* Section 757, comment b (1939): "A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers." This language was approved by the Supreme Court in *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974), and is consistent with the full opinion of *United States ex rel Norwegian Nitrogen Products Co., Inc. v. United States Tariff Commission*, *supra*, from which the definition in the current draft of Bill 1-119 is apparently taken.

We submit that the confidentiality of certain commercial and financial information is a "ground rule of American business" and that such material is entitled to a qualified-privilege status as "a matter of right." *National Parks & Conservation Ass'n v. Morton*, *supra*, 162 U.S. App. D.C. at 226, 499 F.2d at 768. The failure to include a specific exemption for confidential commercial or financial information is, we submit, inconsistent with the current law. It would be unwise and inequitable to leave the bill in its current form and thereby penalize the Company, its subscribers, and the Public Service Commission.

We are hopeful that your committee will look with favor on these comments and amend the bill accordingly. Thank you for attention in this matter.

Sincerely,

DELANO E. LEWIS.

WASHINGTON, D.C., January 27, 1976.

DAVID CLARKE, ESQ.,

Chairperson, Committee on Judiciary and Criminal Law, District of Columbia Council, Washington, D.C.

DEAR MR. CLARKE: The following changes should be made to the Comments of the D.C. Bar, Division I, Committee on Access to Government Information, regarding D.C. Bill No. 1-119:

(1) On page 2 of Appendix C, line 12 should be amended to read "ten days", not "fifteen days".

(2) On page 2 of Appendix D, the third line of paragraph (B) should be amended to read "ten days", not "fifteen days".

Respectfully yours,

LARRY P. ELLSWORTH,

*Chairperson, Committee on Access
to Government Information.*

FEBRUARY 18, 1976.

LARRY P. ELLSWORTH, ESQ.,

Chairperson, Committee on Access to Government Information, District of Columbia Bar, Washington, D.C.

DEAR MR. ELLSWORTH: Thank you for your letter of January 27, 1976 noting changes to the comments of the D.C. Bar, Division I, Committee on Access to Government Information, regarding D.C. Bill 1-119. Those changes will be made a part of the record.

Sincerely,

DAVID A. CLARKE,

*Chairperson, Committee on the
Judiciary and Criminal Law.*

JEWISH COMMUNITY COUNCIL OF GREATER WASHINGTON,
Washington, D.C., May 28, 1976.

Hon. DAVID CLARKE,

Chairperson, Committee on the Judiciary and Criminal Law, District of Columbia Council, District Building, Washington, D.C.

DEAR MR. CLARKE: The Jewish Community Council of Greater Washington is a broad-based community relations organization representing 175 affiliated Jewish organizations, congregations and institutions in the District of Columbia and its suburbs in Maryland and Northern Virginia.

We are writing to you concerning one provision of Bill 1-119, a proposed Freedom of Information Act for the District of Columbia, which your Committee is now considering.

The Jewish Community Council of Greater Washington supports the principle that the government should make information it possesses generally available to the public with only such narrowly defined exceptions as are needed to prevent unwarranted intrusion into personal privacy or a disclosure which would clearly injure the public interest.

Admittedly, it is often difficult under this general principle to draw the line between information which should be disclosed, and that which should not. A reasonable balancing of these competing interests seems to have been achieved by the provisions of the Federal Freedom of Information Act (5 U.S.C. 552) and the Federal Privacy Act (Public Law 93-579 of December 31, 1974, 88 Stat. 1896, 5 U.S.C. 552a, effective September 27, 1975). Other Federal statutes bearing on this problem are, for example, 15 U.S.C. 9 (concerning Census Bureau data on individuals); 18 U.S.C. 1905 (concerning trade secrets and confidential data relating to income, profits, costs and expenditures of any person obtained by a government agency); 44 U.S.C. 3508 (concerning information gathered by agencies with assurances of confidentiality); sec. 513, Public Law 93-380 of August 21, 1974 as amended by Public Law 93-568 of December 31, 1974 (concerning information about students in schools and colleges), etc.

We cite the foregoing simply to assist your Committee, but we have not yet reached any conclusions as to whether Bill 1-119 adequately resolves the problems of what information should be withheld and what information should be disclosed, by governmental agencies.

We do, however, believe that one provision of Bill 1-119 should be revised. We refer to section 6, paragraph (1), which now reads as follows:

6. *Information which must be public.* Without limiting the meaning of other sections of the Act, the following categories of information are specifically made public information:

(1) The names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

We recommend, and urge, that the words "sex, ethnicity" be deleted from the foregoing provision for the following reasons:

The ethnicity of a government employee should be irrelevant except where it is the ground for discrimination against an employee or applicant for employment. Many people, indeed, would resent the government's asking about their "ethnicity" or disclosing it to others. Such disclosure inevitably results in highlighting the governmental focus on the generally irrelevant factor of ethnicity and tends to increase the likelihood of discrimination on that ground.

The District of Columbia has repeatedly demonstrated its opposition to the disclosure of ethnicity. For example, the District of Columbia Council enacted D.C. Law 1-26, effective October 30, 1975, which eliminated "all ethnic references in the laws of the District of Columbia relating to education". On August 13, 1975, the 3-judge U.S. District Court for the District of Columbia ruled, in *Pedersen v. Burton*, 400 F. Supp. 960, that the provisions in D.C. Code 30-110 and 30-118 requiring disclosure or recordation of the color of an applicant for a marriage license, were unconstitutional. The Court noted that Mayor-Commissioner Walter Washington, on May 30, 1974, wrote to Senator Thomas Eagleton supporting his bill (S. 3476, 93rd Cong.) to delete the requirement that marriage license applications disclose the color of the applicant. Mayor Washington's letter described that requirement as "outmoded and archaic and . . . repugnant". The bill was passed by the Senate but the House did not complete action on the bill in the closing days of 93rd Congress.

To enact the requirement that the "ethnicity" of governmental employees be made public information and released would contradict these positions and their good sense.

The same reasons support our recommendation for eliminating the word "sex" from section 6(1) of Bill 1-119. It may also be noted that your Committee on May 20, 1976 voted unanimously to report favorably to the D.C. Council the bill (1-36) to eliminate all sex-based criteria from the D.C. Code.

We do not say that it would be improper to release to the public for example, a survey already made by an agency which summarizes the ethnicity and sex of the person employed in a particular agency or in the D.C. government, so long as it does not identify the ethnicity and sex of individual employees.

It may even be proper, in some circumstances to disclose the latter information in connection with litigation or administrative proceedings involving charges of actual discrimination based on ethnicity or sex. But these are matters which can be dealt with without having the words "sex, ethnicity" in section 6(1). What we are saying is that to enact section 6(1) in its present form, declaring that the sex and

ethnicity of particular identified employees are public information which must be disclosed, would be inconsistent with sound public policy, damaging to the objectives of nondiscrimination, an unwarranted invasion of personal privacy, and objectionable to many people.

We urge that your Committee delete the words "sex, ethnicity" from section 6(1) of Bill 1-119.

With warmest regards,
Sincerely,

Judge WILLIAM C. LEVY,
President.

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., June 17, 1976.

Judge WILLIAM C. LEVY,
*President, Jewish Community Council of Greater Washington,
Washington, D.C.*

DEAR JUDGE LEVY: Thank you for your letter of May 28, 1976. You may rest assured that, as an intervening plaintiff in *Pederson v. Burton* and as the Chairperson of the Committee on the Judiciary and Criminal Law which shepherded through the Council the bill eliminating ethnic references from the education laws of the District of Columbia and which is now shepherding through the Council the Anti-Sex Discriminatory Language Act, I will remain vigilant with respect to your concerns about the publication of the ethnicity and sex of individual employees of the Mayor and agencies of the government.

Sincerely,

DAVID A. CLARKE,
*Chairperson, Committee
on the Judiciary and Criminal Law.*

FREEDOM OF INFORMATION CLEARINGHOUSE,
Washington, D.C., July 14, 1976.

Councilmember DAVID A. CLARKE,
*Committee on the Judiciary and Criminal Law,
District Building, Washington, D.C.*

DEAR COUNCILMEMBER CLARKE: The Freedom of Information Clearinghouse wishes to express its support of your efforts to pass comprehensive and effective freedom of information legislation for the District of Columbia. The Clearinghouse was established in 1972 to give legal and technical assistance to public interest groups, citizens, and the press in the effective use of laws granting a right of access to government-held information. As part of these efforts, we developed a Model State Freedom of Information Act, which we feel incorporates most of the strengths and eliminates most of the weaknesses contained in existing public information laws, while respecting and protecting the valid interests of government in selected confidentiality. Councilmember Dixon's Bill No. 1-119 closely parallels our original version of the Model Act.

Subsequently, we have revised our Model Act to incorporate the suggestions of others, especially the changes proposed by the D.C. Bar, Division I, Committee on Access to Government Information during

the hearings before the Council's Committee on the Judiciary and Criminal Law on January 28, 1976. Except for minor differences which we believe to be improvements, our Model Act parallels the Bar's proposal. Moreover, the Model Act includes an important new provision, mentioned by the D.C. Bar, but not incorporated into its proposed bill, that would require the indexing and publication of adopted rules and certain descriptive information in order to increase the ability of the public to locate government-held documents.

While by definition these records are "public", as a practical matter they are often impossible to find, even though they are in reality "law" or "policy". Such indexing has long been required on the Federal level, and a similar provision has been recommended by the American Law Institute in its Model Administrative Procedure Act.

We have enclosed a copy of our Model Act, as well as a recent decision of the District of Columbia Court of Appeals which illustrates the type of problem that can occur when agencies do not index past precedents, and which points out the serious deficiency in this respect of Mayor's Order 76-109. In that case the Court held that even if a citizen has been denied the right to prove unequal treatment on the part of the Board of Zoning Adjustment by the fact that the Board's prior decisions were not indexed, the citizen has no remedy because the present Commissioner's order does not require such indexing.

The Clearinghouse hopes that the Council will see fit to add an indexing provision to Bill No. 1-119 similar to the one that the ALI and the Clearinghouse have proposed. Unless such a provision is adopted, important rights of the citizens of the District of Columbia will continue to be controlled by bodies of secret law.

Sincerely,

PATRICIA B. SKIDMORE,

Administrator, Freedom of Information Clearinghouse.

Enclosures (2).

MODEL STATE FREEDOM OF INFORMATION STATUTE

Be it enacted by the _____ of the State of _____ that this Act shall be known as the Freedom of Information Act of the State of _____.

SEC. 1. PUBLIC POLICY. It is hereby declared to be the public policy of this State that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, the provisions of this statute shall be construed in every instance with the view toward complete public access to records in the possession or control of the government, and the minimization of costs and time delays to persons requesting information.

SEC. 2. DEFINITIONS.—As used in this statute:

(A) the term "public body" includes:

(1) every officer, agency, department, division, bureau, board or body in the executive branch of government;

(2) every officer, board, commission, council, or committee in the legislative branch of government; and

(3) every officer, judge, court, board, department, commission, council or agency in the judicial branch of government;

(B) "person" includes any individual, partnership, corporation, association, or public or private organization.

(C) "record" includes all books, papers, maps, photographs, films, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics, prepared, owned, used, in the possession of, or retained by a public body;

(D) "adjudication" means agency process for the formulation of an order.

SEC. 3. RIGHT OF ACCESS TO RECORDS; ALLOWABLE COSTS; TIME LIMITS.—

(A) Any person has a right to inspect and, at his or her discretion, to copy any record of a public body, except as otherwise expressly provided by Section 7 (exceptions) of this statute, in accordance with reasonable rules concerning time and place of access that may be issued by a public body after public notice and comment.

(B) Each public body, upon a request for records made under this statute, shall within fifteen days (excepting Saturdays, Sundays, and legal holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested legal holidays) of the submission of the petition.

(1) If the Attorney General determines that the record may be withheld, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the trial court of general jurisdiction.

(2) If the Attorney General determines that the record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may:

(a) bring suit in the trial court of general jurisdiction to enjoin the public body from withholding the record and to compel the disclosure of the requested record, or

(b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purposes. If such a demand is made, the Attorney General shall bring suit within 10 days (excluding Saturdays, Sundays, and legal holidays) of its receipt. The records. Any failure on the part of a public body to respond to a request made under subsection (A) within the time provisions of this subsection shall be deemed a denial of the request.

(C) If a determination is made to comply with a request, the records shall be made available when the requester is notified of the determination or immediately thereafter.

(D) Each public body may establish and collect fees not to exceed the actual, direct cost of searching for and making copies of records. But fees shall not be charged for examination and review to determine whether such records, or portions of records, are subject to disclosure. Records shall be furnished without charge or at a reduced charge when furnishing the information can be considered as primarily benefiting the general public and shall be furnished without charge when the information is about the individual requesting it.

SEC. 4. ADMINISTRATIVE APPEALS AND ENFORCEMENT.—

(A) Any person denied the right to inspect a record of a public body may petition the Attorney General to review the record to determine whether it may be withheld from public inspection. This determination shall be made within fifteen days (excluding Saturdays, Sundays, and requester shall have an absolute right to intervene as a full party in said suit at any time.

(B) In any suit filed under section 4(A) of this statute, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure of any records improperly withheld from the person seeking disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court, other persons, including the requester, counsel and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders. Upon motion and consent of all parties, if the court makes a written finding, with a statement of reasons, that extraordinary circumstances require a portion of the proceedings to be closed to the general public and that closing such portion of the proceedings is necessary to achieve an overriding policy objective of this Act, the court may order that that portion of the proceedings be held in the presence of all parties, counsel, and necessary witnesses with the general public excluded. Any noncompliance with an order of the court may be punished as contempt of court.

(C) Except as to cases the court considers of greater importance, proceedings arising under section 4(A) of this statute, including appeals, take precedence on the docket over all other cases and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record substantially prevails in such a suit, he or she shall be awarded reasonable attorney fees and other costs of litigation.

SEC. 5. RECORDING OF FINAL VOTES.—Each public body having more than one member shall maintain a record of the final votes of each member in each proceeding of that public body. Said records shall be available for public inspection as provided in Section 6(A)(7) of this statute.

SEC. 6. INFORMATION WHICH MUST BE PUBLIC; PUBLICATION REQUIREMENTS.—

(A) Without limiting the meaning of other provisions of this Act, the following categories of information are specifically declared to be public information, except in extraordinary circumstances where an exception from disclosure applies and the policy reasons for that exception clearly outweigh the public interest in disclosure in the particular case:

(1) the names, sex, race, ethnicity, salaries, title, and dates of employment of all employees and officers of a public body;

(2) administrative staff manuals and instructions to staff manuals and instructions to staff that affect a member of the public;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) those statements of policy and interpretations of policy, statutes, and rules which have been adopted by a public body;

(5) correspondence and materials referred to therein, by and with a public body relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the state, a subdivision of the state, the public, or any private party;

(6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) the minutes of all proceedings of all public bodies and all votes of each member of each public body at such proceedings;

(B) Notwithstanding any other provisions of this Act, each public body shall separately state and currently publish for the guidance of the public:

(1) a description of the organization of the public body, stating the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available and a description of all forms and instructions used;

(2) a description of the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(C) (1) The Secretary of State shall compile, index, and publish all effective rules adopted by each public body. Compilations shall be supplemented or revised as often as necessary and at least once every two years.

(2) The Secretary of State shall publish a bulletin at least monthly setting forth the text of all rules filed during the preceding month excluding rules in effect upon the adoption of this Act.

(3) The Secretary of State may omit from the bulletin or compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting public body, and if the bulletin or compilation contains a notice accurately stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

SEC. 7. EXCEPTIONS FROM MANDATORY DISCLOSURE.—

(A) The following matters may be withheld from disclosure under the provisions of this statute but these exceptions from

mandatory disclosure only permit, and never require, withholding by a public body:

(1) Confidential commercial or financial information, but only to the extent that disclosure would:

(a) result in substantial and unfair competitive injury to the submitter of that information to a public body, if the submitter at the time of the submission specifically requested that the information not be made public, or, if submitted prior to the effective date of this statute, such a request is reasonably to be implied from the circumstances of the submission; or

(b) lead to financial speculations in currencies, securities, or commodities which will seriously interfere with a planned transaction of the State or cause substantial financial injury to the State or National economy.

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(3) Records of law enforcement agencies, but only if they were compiled as part of an investigation for law enforcement purposes and the disclosure of the information would harm law enforcement by:

(a) revealing the identity of informants not generally known outside the government;

(b) prematurely releasing information where this would impede the government's enforcement efforts in a particular prospective law enforcement action;

(c) disclosing investigatory techniques not generally known outside the government;

(d) depriving a person of a right to a fair trial or an impartial adjudication;

(e) endangering the life or safety of a law enforcement officer.

(4) Inter-public body and intra-public body communications, but only to the extent that such communications do not fall within Section 6 and (except for part (a) below) do not consist of facts, analysis or evaluation of facts, or summaries of facts, involving:

(a) deliberations among judges or among judges and their confidential aides concerning prospective judicial decisions;

(b) information routinely protected by the attorney work-product or attorney-client privileges; and

(c) recommendations made by advisers on policymaking, adjudicatory, rule-making, or judicial decisions.

provided that this subsection shall not protect from disclosure inter-public body communications between any two or three branches of the State government as defined in subsections (1), (2) and (3) of Section 2(A) of this statute.

(5) Test questions and answers to be used in future license, employment, or academic examinations, not including previously administered examinations or answers to questions thereon.

(B) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (A).

(C) No record shall be withheld for any reason other than those that are specifically enumerated in subsection (A).

SEC. 8. LETTERS OF DENIAL.—

(A) Denial by a public body of a request for records from that public body shall be in written form and contain at least the following:

(1) a description of the contents of the records withheld and a statement of the specific reasons for the denial, correlated to specific portions of the records, including citations to the particular exception(s) under section 7 of this statute relied on as authority for the denial;

(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) notification to the requester of any administrative or judicial right of review under section 4(A) of this statute.

(B) Each public body shall maintain a file of all letters of denial of requests for records and of denial of requests for the waiver of fees from that public body. This file shall be made available to any person on request.

SEC. 9.—PENALTIES.—Upon motion, notice, and hearing, any public official or employee who withholds records or denies a request for records without a reasonable basis in law shall be subject to a fine by the court which ordered disclosure of \$1000 for each offense.

SEC. 10.—REPEALER.—All laws of this State that are inconsistent with this statute are to the extent of the inconsistency hereby repealed.

District of Columbia Court of Appeals

No. 8756

LEGISLATIVE STUDY CLUB, INC., PETITIONER,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT,
RESPONDENTS,

LAWRENCE A. MONACO, JR., CAPITOL HILL RESTORATION SOCIETY,
INTERVENORS.

Petition for Review of Decision of the District of Columbia Board
of Zoning Adjustment

(Argued October 9, 1975—Decided June 16, 1976)

Arthur L. Fox, II, for petitioner.

James N. Dulcan, Assistant Corporation Counsel, with whom *C. Francis Murphy*, Corporation Counsel at the time the brief was filed, *Louis P. Robbins*, Principal Assistant Corporation Counsel, and *Richard W. Barton*, Assistant Corporation Counsel, were on the brief, for respondent.

Lawrence A. Monaco, Jr., for intervenors.

Before YEAGLEY and HARRIS, *Associate Judges*, and KORMAN, *Associate Judge*, Superior Court of the District of Columbia.*

YEAGLEY, *Associate Judge*: This is a petition for review of a decision of the District of Columbia Board of Zoning Adjustment denying petitioner a certificate of occupancy to use a building in an R-4 zoning district in Southeast Washington holding petitioner does not qualify as a private club. Finding that petitioner's contentions to the contrary are without merit, we affirm the judgment of the Board of Zoning Adjustment and dismiss the petition.

The property in question is located at 133 C Street, S.E., diagonally across the street from the United States House of Representatives' Cannon Office Building. It is zoned R-4, which includes row dwellings, conversions, apartments, and private clubs. The building was formerly occupied as a convent but had become vacant. Several persons who were to become the organizers of petitioner, the Legislative Study Club, were then operating as members or employees of Congress Watch or Citizen Action when they found this building and learned of its availability for an R-4 use. On August 14, 1973, they obtained articles of incorporation for a study club and on that date signed a lease for the premises and filed an application for a certificate of occupancy.

The "Club" is a nonprofit society organized to advocate and maintain the principles of citizen participation in government. It is composed of two internal organizations, Citizen Action, which prepares and publishes materials for public interest groups, and Congress Watch, a large public interest lobby. Of the "Club's" 21 or 22 "members" 12 or 13 are full-time salaried employees who work at the clubhouse¹. Congress Watch and several of its members are registered lobbyists.

On August 14, 1973, the "Club" applied to the District of Columbia Department of Economic Development for a certificate of occupancy to permit it to use the building as a private club, a use permitted in the R-4 zone in which the building is located. The "Club" submitted with the application its articles of incorporation which had just been approved on the same date and a letter from its president which stated, *inter alia*, that the first floor was to be used for reception purposes and "limited office use" and that the second and third floors would be used for "offices, for a library and for conferences and meetings." On the basis of this information, the Zoning Administrator found the "Club" to be a private club within the R-4 definition and issued a certificate of occupancy. Mr. Lawrence Monaco, a nearby property owner, and the Capitol Hill Restoration Society, intervenors here, filed an "appeal" with the Board of Zoning Adjustment. After a hearing the Board reversed the Zoning Administrator's ruling, finding that petitioner did not meet the requirements of a private club under District regulations for R-4 zoning. We concur.

Section 3104.39 of the Zoning Regulations provides that an R-4 district may include, as a matter of right, a "*Private Club*, lodge, fraternity house, sorority house, or dormitory, except when such use is a service customarily carried on as a business." Petitioner asserts that since it is organized for "charitable, educational and scientific purposes" it fits within the provisions of an R-4 district and asserts the

*Sitting by designation pursuant to D.C. Code 1973, § 11-707(a).

B.Z.A. has adopted an unduly restrictive interpretation which must be reversed on appeal. We do not agree. We view petitioner's efforts to meet the R-4 criteria by calling itself a private club as little more than a device designed to circumvent the requirements of the Zoning Regulations.

The Board found that the Legislative Study Club is a nonprofit organization for the benefit of the public in general but not a private club for the social benefit of its members. There is ample evidence to support the decision of the Board. In its findings of fact and conclusions of law it said:

The Zoning Commission has in the regulations defined both a "Private Club" and a "Non-profit Organization", and a review of the progression of permitted uses in the regulations indicates that a "Private Club" is a more restrictive use than a "Non-profit Organization" since they are first permitted in the R-4 and SP Districts respectively. The Commission would not have done so had they not intended a distinction. In our opinion the Legislative Study Club is a nonprofit organization for the benefit of the public in general and not a private club for the social benefit of its members.

The Board arrived at this conclusion after examining the evidence and interpreting the definitions in its regulations regarding a private club and a nonprofit organization. Its interpretation is binding on this court unless it is plainly erroneous or inconsistent with the regulation. *Dietrich v. District of Columbia Board of Zoning Adjustment*, D.C. App., 320 A.2d 282, 286 (1974); *Taylor v. District of Columbia Board of Zoning Adjustment*, D.C. App., 308 A.2d 230, 232 (1973). Here there is a reasonable basis for the Board's interpretation and it will not be disturbed.

A private club is defined in § 1202 of the Zoning Regulations as "a building or portion thereof used by an association organized for the promotion of a common social objective and not for profit, where facilities are limited to its members and their guests. . . ." A nonprofit organization, on the other hand, is defined as "an organization organized and operated exclusively for religious, charitable, literary, scientific, community, or educational purposes . . . provided no part of its net income inures to the benefit of any private shareholder or individual." Both are nonprofit types of organizations, but there the similarity ends. In comparing the two definitions, it is readily apparent that "private club" was intended to cover personal, social matters, while "nonprofit organization" was aimed at nonpersonal, service-type activities. The Board said in its memorandum decision that the petitioner

pursuant to its corporate purposes, operates as a clearing house for class groups by studying specific pieces of legislation and disseminating information to those groups regarding issues such as consumer affairs and public information. The Board reasons that the activities of the Legislative Study Club are vocational in nature as opposed to avocational activities connoted by the term common social objectives.

Groups falling within the definition of nonprofit organizations are not permitted in R-4 zoning districts. They are listed in the Zoning Regulations under SP (Special Purposes) districts for conversions of building (*see* D.C. Zoning Regs. § 4101.35) and are not permitted

in any residential district. To hold that an organization such as petitioner may, by the mere affixing of the word "club" to its name, change its status from that of a nonprofit "vocational" organization to that of a social club, so as to qualify for an occupancy permit in an R-4 district, would make a mockery of the Zoning Regulations and would destroy the careful distinctions drawn by the Zoning Commission. We hold that the Board ruled properly that the Zoning Administrator had erred in finding petitioner qualified as a club for the occupancy in an R-4 zoning district.

Petitioner also alleges certain procedural errors on the part of the Board. It asserts first that the intervenors failed to carry their burden of proof in the proceedings before the Board. We have read the transcript of the hearing and have examined the evidence submitted and conclude that, contrary to what petitioner contends, the intervenors did indeed meet their burden. The evidence included a certified copy of petitioner's articles of incorporation; a letter from the president of the "Club" advising that much of the space at the premises was to be used for offices; extracts from the Congressional Record showing that a lobbying organization (Congress Watch) had listed its address as that of the "Club's"; and testimony by Mr. Monaco as to the nature of the operations of the "Club". In addition, there was testimony from a witness who had visited the premises on invitation of members of the "Club", and discovered that the building was being used for "an office". He testified the private club status appeared to be a subterfuge to get around the Zoning Regulations. The foregoing evidence was ample to establish a *prima facie* case for intervenors.

Petitioner also asserts that the Board unlawfully denied it access to the Board's previous decisions construing the Zoning Regulations, in violation of D.C. Code 1973, § 1-1504 and Commissioner's Order No. 71-370 (Nov. 2, 1971 [*see* 18 D.C. Reg. 289 (Nov. 15, 1971)]). The request by petitioner for such records was made on March 25, 1974, when it filed its motion for reconsideration and reargument which was over 3 months after the Board's hearing was concluded. Petitioner specifically asked the Board for "a list, or preferably copies of all Board and Zoning Commission decisions over the past 15 years dealing with questions of what constitutes a 'private club' and a 'non-profit organization' within the meaning of the zoning regulations." It asserted that the Code and the Commissioner's Order required the furnishing of this material.¹

Decisions of the Board, as well as minutes of its executive sessions, are public records and are available to the public at the Board office. Reproductions may be obtained at a nominal fee. Unfortunately no index has been maintained of these documents. What petitioner seeks is to compel the Board to compile such an index. As beneficial as that result might be, there is no requirement in any statute or order compelling the indexing of the Board's decisions. We are unable to find any law or rule, nor are we referred to any, that would require the Board to cull out of its records relevant decisions in order to provide petitioner with a list of cases, should there be any, concerning the definition of "private club" or "nonprofit organization."

¹ In addition, petitioner also requested the decisions pursuant to another Commissioner's Order—No. 68-211 (Mar. 19, 1968). However, this order was expressly repealed by Commissioner's Order No. 71-370 and is thus not relevant here.

Petitioner cites us to the recent Supreme Court case of *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975), noting that the Court in that case specifically required the N.L.R.B. to prepare an index of its "final opinions." What petitioner ignores in its analysis of the case is that the Court did this pursuant to a specific statutory provision. The Court relied upon 5 U.S.C. § 552(a) (2) (1970), which provides *inter alia* that "[e]ach agency . . . shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967" This section of the United States Code is not applicable to the Board since § 551(1) (D) specifically exempts from its provisions "the government of the District of Columbia." Nor is there any similar provision in either D.C. Code 1973, § 1-1504 or Commissioner's Order No. 71-370. Contrary to petitioner's assertion, the D.C. Code provision and the Commissioner's Order do not "closely parallel" the federal statute at all, especially in the area of keeping an index. There is no statute applicable to District zoning records which compels the keeping of an index.² Petitioner's argument that the absence of an index somehow renders the Board's decision void for lack of "fundamental" procedural due process is specious.

Finding no error in the proceedings before the Board of Zoning Adjustment, the order appealed from is

Affirmed.

PUBLIC CITIZEN,
September 24, 1976.

GREG MIZE,
*Counsel, Committee on Judiciary and Criminal Laws,
District of Columbia Council*

DEAR GREG: The Bar authorized the filing of the enclosed letter with the Council. Since it merely reiterates our earlier positions, the Board did not have to act upon it.

Also enclosed is a copy of the new amendment to the "other statutes" exemption to the Federal FOIA, as well as the conference report statement about it.

Yours,

LARRY ELLSWORTH.

LARRY P. ELLSWORTH,
Washington, D.C., September 24, 1976.

Re: Proposed District of Columbia Freedom of Information Act, Bill No. 1-119.

DEAR COUNCILMEMBER: The D.C. Bar's Committee on Access to Government Information testified at the Council's public hearings in January, and submitted extensive comments generally supporting passage of Bill 1-119. Those comments and this letter, while submitted with the authorization of the Bar, are the views of the Committee alone, and have not been considered by the entire Bar. The Committee

² We note that on May 4, 1976, the Mayor promulgated Mayor's Order 76-109 [see 22 D.C. Reg. 6351 (May 14, 1976)] repealing Commissioner's Order No. 71-370 and establishing new procedures for obtaining official information from governmental agencies. It requires that the requested documents must be identified with such reasonable specificity as "will enable an agency employee to locate the . . . records" See § 1(d). As in Commissioner's Order 71-370, there is no requirement compelling the making or keeping of an index.

continues to support the bill. However, the Committee wishes to bring to your attention four instances in which pro-disclosure portions of the bill, which our Committee favored in its earlier comments, were unnecessarily weakened by the Committee on the Judiciary and Criminal Law. Furthermore, we request your consideration of an important amendment, rejected by the Judiciary Committee, concerning the overall scope of the bill. While our Committee believes that many other suggestions contained in our earlier comments would also be improvements, we believe that the points raised in this letter are the most vital. Of course, we will gladly furnish you with a full set of our original comments upon request.

Bill 1-119 will make all records of the Executive branch available to the public upon request, subject to seven "exemptions" (or, more accurately, "exceptions"). Those exemptions are set forth in section 204, and the Bar Committee suggests that two of them (exemptions (4) and (6)), which were not contained in the original bill, should either be eliminated or modified.

As indicated above, Bill 1-119 originally contained no exception from mandatory disclosure for internal deliberations of agency officials (exemption 4). Our Committee suggested that a limited exception was needed to protect truly sensitive communications and recommendations made in formulating agency policy. We offered very carefully drawn language intended to achieve that result without permitting a veil of secrecy to be drawn over agency inefficiencies and mistakes, a result which has sometimes occurred under the equivalent Federal exception. Unfortunately, while the Judiciary Committee heeded our suggestion that an exception was necessary, it ignored our warnings about the overbreadth of the analogous Federal provision. Bill 1-119 now contains the Federal exception in verbatim form. This federal exception is so vague that it has spawned an excessive amount of litigation and still its parameters remain ill-defined. We suggest that the Council should substitute a more precise and narrow exception like that we offered in our original comments.

Exception (6) in Bill 1-119—"information specifically exempted from disclosure by statute"—should be eliminated altogether. The other exceptions already protect all legitimate interests in nondisclosure, including privacy, trade secrets, and law enforcement activities, among others. This exception thus only confuses citizens and government officials alike, by forcing them to look beyond the Information Act itself to the entire three volumes and supplement of the D.C. Code in order to make sure that some statute passed in another era does not undermine the Information Act's disclosure mandate. This is not only unnecessary but, as the Federal experience has shown, unwise because the broad and discretionary terms of some statutes of this kind invite abuse by secrecy-minded officials intent upon covering-up embarrassing evidence of their mistakes. Indeed, subsequent to the issuance of the Judiciary Committee's report, the Federal Act was amended to significantly narrow the scope of this exception. Pub. L. 94-490, 94th Cong., 2d Sess. (September 13, 1976). See H.R. Rep. No. 94-1441, 94th Cong., 2d Sess. 8, 24-25 (1976). Yet Bill 1-119 continues to use the language of the pre-amendment Federal Act. We therefore recommended that the Council delete exception (6) altogether, and make clear that all laws inconsistent with the new Act are repealed to the extent of the inconsistency.

Another extremely important provision of the original bill, as well as the Federal Act, is the section requiring all court actions to be expedited to the fullest extent practicable. When a person, especially a journalist, needs information, he generally needs it quickly, not several years later. Quick court review of denials is thus indispensable. Learning the truth after it is too late to act is of very little use.

An additional provision contained in the Federal Freedom of Information Act (5 U.S.C. § 552(a)(4)(F)), which helps to ensure prompt and proper disclosure was likewise dropped from Bill 1-119. That section would hold government officials personally accountable for intentionally or unreasonably withholding non-exempt documents. Fifteen state public information statutes also include direct penalty provisions, which are generally quite severe. *See S. Rep. No. 93-854, 94th Cong., 2d Sess. 63-64 (1974)*. While the Federal Information Act did not originally contain such a provision, the many examples of official flaunting of the Act led Congress to add such a sanctions provision in 1974. The Committee strongly urges the Council to reinstate this provision while insuring, at the same time, that responsible officials and employees are given a fair hearing before imposition of any penalty.

Finally, the Access Committee strongly reiterates its earlier suggestion that the Information Act should be made to apply to all public bodies, including the Council and the Courts, as well as the Mayor and the agencies. The public's need to know how its elected Council members and appointed judges are performing their jobs is just as great as the need to know how its elected major and appointed Executive officials are performing their jobs. Any fear by Council members that purely political documents which were not compiled at taxpayer expense would have to be made available to opponents is unfounded, and there does not appear to be anything in the Home Rule Act prohibiting applying disclosure policies to the judiciary. We thus urge the Council to open all branches of the District Government to public scrutiny.

In closing, the Committee wishes to reiterate its support for Bill 1-119, while emphasizing that each of the above suggested changes is of vital importance to the citizens of the District. We thank you for your consideration of our suggestions.

Most sincerely yours,

LARRY P. ELLSWORTH,
*Chairman, Committee on Access
To Government Information.*

III. STUDIES AND RESEARCH AVAILABLE TO THE COMMITTEE STAFF ON BILL 1-119

COUNCIL OF THE DISTRICT OF COLUMBIA MEMORANDUM

To Greg Mize.

From Peter Moyer.

Date October 3, 1975.

Subject D.C. Freedom of Information Act. Comparative Analysis of Proposed D.C. Freedom of Information Act (FOIA), Commissioner's Order No. 71-370, and Federal Freedom of Information Act.

This memorandum summarizes the provisions of the present D.C. authority on release of information, Commissioner's Order No. 31-370; the proposed legislation, the D.C. Freedom of Information Act; and the Federal Freedom of Information Act, including the 1974 amendments.

The provisions are listed under three main headings, Access, Exemptions, and Enforcement. Provisions of the 1974 amendments to the federal act are indicated with an asterisk. A citation is included to the specific section of the order, bill or act.

The analysis raises the following questions about the proposed bill:

1. Why give the agency 15 days to respond to a request? Both the commissioner's order and the federal act call for response within 10 days, although both provide for an extension of time for good cause, while the proposed bill does not.

2. What is the effect of an agency's failure to comply with the time provisions? Should failure to respond to a request within 15 days be deemed a denial, and as such subject to immediate judicial review?

3. Should the Council monitor agency compliance with the FOIA? A requirement to submit periodic reports on denials would provide this capability. As a minimum, shouldn't agencies be required to maintain files on denials, as they presently do under the Commissioner's Order?

4. Should an agency's denial include a statement of the requestor's rights to judicial review under the FOIA?

5. Should the bill include a provision for deleting exempted material from a record and providing a "reasonably segregable portion" thereof, as the federal act provides? Under the bill as presently drafted, an agency could deny access to a record because only one portion of it contained exempted material.

6. Should an exemption be included for Records specifically exempted by law? Does failure to include such an exemption put the bill in conflict with other laws?

Analysis follows.

1. ACCESS

| Com. Order 71-370 | | District of Columbia FOIA | | Federal FOIA 5 U.S.C. 552 (*1974 amendment) | |
|---|------|--|------|--|-------------------------|
| Provision | Cite | Provision | Cite | Provision | Cite |
| 1. 10-day time frame (including provision for delay)... | 2(a) | 1. 15-day time frame..... | 4(c) | 1. 10-day time frame.* (Provision for delay, not to exceed 10 additional days). | (a)(6)(A), (a)(6)(B) |
| 2. "Reasonable procedures for time and place and fees". | 2(c) | 2. Fees may be collected not to exceed cost of search and duplication (provision for waiver in public interest). | 4(B) | 2. Uniform fee schedule (provision for waiver)*..... | (a)(4)(A) |
| 3. Denials within 10 days—Must state: (a) Reason for denial. (b) Procedure for appeal. | 2(b) | 3. Denial within 15 days—Must state: (a) Reason for denial. (b) Denial constitutes final determination. | 4(c) | 3. Denial within 10 days*—Must state: (a) Reason therefor. (b) Right to appeal. | 6(A)(i) |
| 4. File of denials shall be maintained..... | 2(b) | | 4(A) | 4. Administrative report* to Congress each year (denials, fees, rules, etc.). | 552(d) |
| | | | | 5. Indexes on information*..... | a(2) |
| | | | | 6. Request "reasonably describes" materials..... | |
| NONEXEMPT MATERIALS—SPECIFIC CATEGORIES MADE PUBLIC INFORMATION | | | | | |
| Com. Order 71-370 | | District of Columbia FOIA (Bill No. 1-152) | | Federal FOIA 5 U.S.C. 552 | |
| Provision | Cite | Provision | Cite | Provision | Cite |
| None..... | | 1. Final adjudicatory opinions..... | 6(3) | 1. Final adjudicatory opinions..... | (a)(2)(A) |
| | | 2. Statements and interpretations of policy..... | 6(4) | 2. Statements of policy and interpretations..... | (a)(2)(B) |
| | | 3. Administrative staff manuals and instructions..... | 6(2) | 3. Administrative staff manuals and staff instructions..... | (a)(2)(C) |
| | | 4. Names, sex, salaries, etc. of District of Columbia Government employees..... | 6(1) | 4. Votes of agency proceeding..... | (a)(4) |
| | | 5. Planning policies and goals..... | 6(5) | | |
| | | 6. Correspondence between Mayor and agency relating to rights of District, public, or private party..... | 6(6) | | |
| | | 7. Information re expenditures of public funds..... | 6(7) | | |
| | | 8. Minutes and votes of agency proceedings..... | 6(8) | | |

II. EXEMPTIONS

| Com. Order 71-370 | | District of Columbia FOIA (Bill No. 1-152) | | Federal FOIA 5 U.S.C. 552 (*Provisions included in 1974 amendment) | |
|---|---------|--|---------|--|--------|
| Provision | Cite | Provision | Cite | Provision | Cite |
| 1. Privacy | 3(a)(2) | 1. Privacy | 5(A)(2) | 1. Privacy | (b)(6) |
| 2. Law enforcement (broad) | 3(a)(3) | 2. Law enforcement (narrowly defined) | 5(A)(3) | 2. Law enforcement (narrowly* defined) | (b)(7) |
| 3. Commercial or financial info confidentially obtained | 3(a)(4) | 3. Trade secrets | 5(A)(1) | 3. Trade secrets and commercial or financial information illegally obtained. | (b)(4) |
| 4. Records specifically exempt by law | 3(a)(1) | | | 4. Records specifically exempt by law | (b)(3) |
| 5. Interagency or intraagency communications | 3(a)(5) | | | 5. Interagency or intraagency communications | (b)(5) |
| | | | | 6. National security | (b)(1) |
| | | | | 7. Internal personnel rules and practices | (b)(2) |
| | | | | 8. Financial institution regulatory reports | (b)(8) |
| | | | | 9. Geological and geophysical information | (b)(9) |
| | | | | 10. *Provision for providing a reasonably segregable portion with exempted material deleted. | (b) |

III. ENFORCEMENT

| Com. Order 71-370 | | District of Columbia FOIA (Bill No. 1-119) | | Federal FOIA 5 U.S.C. 552 | |
|-------------------------------------|---|--|------|---|--|
| Provision | Cite | Provision | Cite | Provision | Cite |
| A. Appeal rights: | 1. Time provisions: (a) Failure to comply with time limits appealable to Review Board (sec. B. below). | 4(c)(1) | | A. Appeal rights: 1. Time provisions: Failure to comply with* time provisions deemed exhaustion of administrative remedies (i.e., immediate judicial review). | (a)(6)(C) |
| | | | | | |
| 2. Denial provisions: | (a) Knowledge and response of head of agency implied in request. (b) Direct appeal to review board | 2(b) 4(c)(2) | | 2. Denial provisions: (a) Right to appeal to agency head* (b) Right to judicial review upon denial of appeal*. | (a)(6)(A)(i) (c)(6)(A)(ii) |
| | | | | | |
| B. Remedies: | 1. Public Information Review Board. (a) Board's determination sent to commissioner for action. | 4(a) 5 | | B. Remedies: | |
| | | | | | |
| 2. No provision for judicial review | | | | C. Judicial review*: 1. Jurisdiction for de novo determination 2. Burden of proof on withholding authority 3. In-camera inspection 4. Defendant agency must answer within 30 days. 5. Expedite placing on trial calendar. 6. Awarding of attorney's fees D. Penalties: 1. Civil service shall review for disciplinary action. 2. District court may punish for contempt official who fails to comply with court order. | (a)(4)(B) (a)(4)(B) (a)(4)(B) (a)(4)(C) (a)(4)(D) (a)(4)(E) (a)(4)(F) (a)(4)(G) |
| | | | | | |
| A. Appeal rights: | 1. Time provisions: No provision for failure to meet time frames. | | | A. Appeal rights: 1. Time provisions: No provision for failure to meet time frames. | |
| | | | | | |
| 2. Denial provisions: | (a) Denial constitutes final opinion of Mayor or agency. | | | 2. Denial provisions: (a) Denial constitutes final opinion of Mayor or agency. | |
| | | | | | |
| B. Remedies: | 1. Petition Corporation Counsel (a) If they determine denial improper, Corporation Counsel shall bring suit against agency or institute proceedings for relief in trial court. | 7(A) 7(A) | | B. Remedies: | |
| | | | | | |
| C. Judicial review: | 1. Jurisdiction for de novo determination 2. Burden of proof on withholding authority 3. In-camera inspection 4. Expedite placing on trial calendar 5. Awarding of reasonable attorney's fees | 7(B) 7(B) 7(B) 7(C) 7(D) | | C. Judicial review*: 1. Jurisdiction for de novo determination 2. Burden of proof on withholding authority 3. In-camera inspection 4. Defendant agency must answer within 30 days. 5. Expedite placing on trial calendar. 6. Awarding of attorney's fees D. Penalties: 1. Civil service shall review for disciplinary action. 2. District court may punish for contempt official who fails to comply with court order. | (a)(4)(B) (a)(4)(B) (a)(4)(B) (a)(4)(C) (a)(4)(D) (a)(4)(E) (a)(4)(F) (a)(4)(G) |
| | | | | | |
| D. Penalties: | 1. \$1,000 fine for violation | 8 | | D. Penalties: 1. Civil service shall review for disciplinary action. 2. District court may punish for contempt official who fails to comply with court order. | (a)(4)(F) (a)(4)(G) |
| | | | | | |

THE D.C. PROJECT: LEGISLATIVE RESEARCH CENTER, GEORGETOWN
UNIVERSITY LAW CENTER, WASHINGTON, D.C.

MEMORANDUM JANUARY 27, 1976

To David Clarke, Chairman, Committee on the Judiciary and Criminal Law.

From Peter Boyer, Legal Intern. Robert Stumberg, Staff Attorney.
Re: The "Trade Secrets" exception to the D.C. Freedom of Information Act, Council Bill No. 1-119.

I. BACKGROUND

Council Bill No. 1-119, the Freedom of Information Act, provides three categories of information which are exempted from the general requirement of disclosure under the act. One of these categories, an exemption for trade secrets, has been criticized as being too narrow to properly protect business and financial data submitted to government agencies.

The C & P Telephone Company has expressed concern that under the bill as introduced, reports of confidential marketing research data which are submitted to the Public Service Commission would become available to competitors under the Act.

This memorandum will examine the common law definition of trade secrets and the judicial interpretation of the trade secrets exemption to the Federal Freedom of Information Act. Based on that analysis a redrafting of the trade secrets exemption to Council Bill No. 1-119 will be proposed.

II. ANALYSIS

a. *Common Law.* The term trade secret is generally given a technical meaning by the courts. The Restatement of Torts defines it as "any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers."¹ The use of terms such as process, formula, or pattern imply technical information relating to manufacturing and production, and would seem to exclude more general business data such as marketing research studies, even though the definition includes "a list of customers" as an example.

The caselaw reflects a somewhat more narrow definition. One early federal case defined trade secrets as "unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities."² In applying this definition the court held that information submitted to the U.S. Tariff Commission as to capital assets and costs of production of a company are not trade secrets and were subject to disclosure under provisions of the Tariff Act of 1922 requiring reasonable public notice and opportunity for opposing interested parties to be heard.³

¹ Restatement of Torts, Volume IV § 757 (B) (1939).

² *United States v. United States Tariff Commission*, 6 F.2d 491, 495 (D.C. Cir. 1925).

³ *United States v. United States Tariff Commission*, 6 F.2d 491 (D.C. Cir. 1925). (Disclosure mandated under § 315(c) of the Tariff Act of 1922, 42 Stat. 858).

Other cases have held that in order for information to be considered a trade secret a substantial element of secrecy must exist, such that there would be difficulty in acquiring the information except through improper means.⁴ Under this doctrine, marketing research data which could be acquired independently, by a competitor, at a significant expense but not through any improper means, would not constitute a trade secret and would not be exempt from disclosure.

Council Bill No. 1-119 adopts the narrow common law definition of *U.S. v. U.S. Tariff Commission* (note 2, *supra*) and adds to it the phrase "obtained from a person and which are generally recognized as confidential."⁵ The language is adopted from the Model State Freedom of Information Statute. The drafter of this section of the Model Act noted the necessity for protecting certain kinds of business information from disclosure. "Trade secrets are of value to businesses and their value is lost if disclosed. The statute adopts the traditional definition of trade secrets and protects such information from disclosure."⁶

The phrase "obtained from a person has been held to mean obtained from someone outside of the government rather than information generated from within an agency."⁷ The phrase "and which are generally recognized as confidential" adds little to the precision of the definition. Gramatically it should be noted that this phrase cannot be read to expand the definition, but rather must be read to qualify it.⁸

This analysis, especially considered in the light of section 2 of the bill requiring its provision to be construed toward complete public access,⁹ indicates that the kind of information that C&P Telephone Company is desirous of protecting would not be exempted from disclosure under the bill as introduced.

b. *Federal Freedom of Information Act.* The Federal act exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential."¹⁰ The House Report accompanying the bill states its purpose is to "... assure the confidentiality of information obtained by the Government through questionnaires ... if it would not customarily be made public by the person from whom it was obtained by the government."¹¹

The courts interpreting the Federal Act have ruled that in order to bring a matter that is not a common law trade secret within this exemption it must be shown that the information is (a) commercial or financial, (b) obtained from a person, and (c) privileged or confidential.¹² A showing that the information obtained by the government is information which the person would not reveal to the general public,¹³

⁴ *Town & Country House and Homes Service, Inc. v. Evans*, 189 A. 2d 390 (Conn. 1963). (Action for injunction and accounting by corporation against former employee who solicited business using plaintiff's customer list which had been obtained within the scope of his employment).

⁵ Council Bill No. 1-119, § 5(A) (1), Council of the District of Columbia.

⁶ Model State Freedom of Information Statute, Comments to Section 4, Freedom of Information Clearinghouse, Washington, D.C.

⁷ *Consumers Union of the United States, Inc. v. Veterans Administration*, 301 F. Supp. 796 (S.D.N.Y. 1969), appeal dismissed, 436 F.2d 1363. (Raw scores, scoring schemes, and quality point scores of hearing aids which were tested by the Veterans Administration held not obtained "from a person" outside the government within the meaning of the exception).

⁸ The conjunction "and" does not permit the clause to be read as an additional category of trade secret. The only possible reading according to the rules of grammar and syntax is that the clause "and which are generally recognized as confidential" modifies "articles" and "materials" in the proceeding line. Being a dependent clause, it qualifies rather than expands the definition.

⁹ Council Bill No. 1-119, § 2, Council of the District of Columbia.

¹⁰ 5 U.S.C. 552(b) (4).

¹¹ H. Rep. No. 89-1497, 89th Cong., 2d Session, at 10 (1966).

¹² *Nat'l Parks and Conservation Ass'n. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

¹³ *Grumman Aircraft Engineering Corp. v. Renegotiation Board*, 425 F.2d 578 (D.C. Cir. 1970).

or that disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained¹⁴ has been held sufficient to establish confidentiality for the purposes of this exemption.

Applying these guidelines, the courts have exempted the following from disclosure under this section:

1. Sales profits, and marketing data submitted by corporations to the Federal Trade Commission during corporate acquisition approval matters before the commission.¹⁵

2. Credit reports supplied to the government in "strict confidence" by an independent credit-reporting agency.¹⁶

3. Statements disclosing the cost accounting principles and procedures observed by corporations filed with the Cost-Accounting Standards Board.¹⁷

4. Exhibits attached to Renegotiation agreements between national defense contractors and the United States which concerned business and sales information, and operating costs and expenses.¹⁸

5. Statements made by employees to the National Labor Relations Board in connection with an unfair labor practice proceeding against their employer prior to public hearings on the matter.¹⁹

6. The amounts of various bids received by a corporation in the course of a corporate acquisition, and filed with the Federal Trade Commission.²⁰

Items held not to be within the federal trade secrets exemption include:

1. Raw scores, scoring schemes, and quality point scores of hearing aids which were tested by the Veterans Administration, on the grounds that the information was generated from within the agency and thus was not obtained "from a person" outside the government within the meaning of the exemption.²¹

2. Inspection reports and notices of violations of health and safety standards of plants subject to the Walsh-Healy Public Contracts Act.²²

3. Research grant applications and related site visit reports compiled by staff members and outside consultants of the National Institute of Mental Health.²³

III. CONCLUSION

The trade secrets exemption in Council Bill No. 1-119 as introduced limits exempted materials to those covered by the common law definition of a trade secret. Incorporating the language of the Federal Act would protect business and commercial information supplied to the government, as well as trade secrets, from disclosure under the proposed D.C. act.

¹⁴ *Nat'l Parks*, note 9 *supra*.

¹⁵ *Sterling Drug Inc. v. F.T.C.*, 450 F.2d 698 (D.C. Cir. 1971).

¹⁶ *Benson v. Gen. Services Administration*, 289 F. Supp. 590 (W.D. Wash. 1968), *aff'd* on other grounds 415 F.2d 878.

¹⁷ *Petkas v. Staats*, 364 F. Supp. 680 (D.C. Dist. Col. 1973).

¹⁸ *Fisher v. Renegotiation Board*, 355 F. Supp. 1171 (D.C. Dist. Col. 1973).

¹⁹ *Barceloneta Shoe Corp. v. Compton*, 271 F. Supp. 591 (D.C. Puerto Rico 1967).

²⁰ *Sterling Drug*, note 10 *supra*.

²¹ *Consumers Union of United States, Inc. v. Veterans Administration*, 301 F. Supp. 796 (S.D. N.Y. 1969), appeal dismissed, 436 F.2d 1363.

²² *Weckler v. Shultz*, 324 F. Supp. 1084 (D.C. Dist. Col. 1971).

²³ *Washington Research Project, Inc. v. Dept. of HEW*, 366 F. Supp. 929 (D.C. Dist. Col. 1973).

If the Committee desires to protect this broader range of material from disclosure, Council Bill 1-119 would conform with the Federal language as follows:

Strike § 5(A)(1) in its entirety and substitute the following:

“(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential.”

This memorandum has not addressed the underlying policy questions as to whether a public utility or other broader classes of non-regulated businesses should be able to protect marketing and commercial information. Should the Committee desire further background on the legal foundation of this policy question, a follow-up memorandum will be prepared.

THE D.C. PROJECT: LEGISLATIVE RESEARCH CENTER, GEORGETOWN
UNIVERSITY LAW CENTER, WASHINGTON, D.C.

MEMORANDUM FEBRUARY 28, 1976

February 28, 1976

To: Greg Mize, Clerk, Committee on the Judiciary and Criminal Law.

From: Robert Stumberg, Staff Attorney.

Re: Revised Timetable on FOIA Written Work.

Unfortunately, it appears that Peter Boyer is a competent counselor; he has entered and won a Georgetown competition having to do with advising clients and identifying issues. He is now obligated to proceed to national competition. I say unfortunately only because it has thrown off our mutually agreed-upon work schedule on the D.C. F.O.I.A.

In order to accommodate Mr. Boyer, I asked him to submit a revised schedule that would still accomplish the same amount of work by the end of the semester. This means crowding more toward the end. He assures me that this can be accomplished through the sacrifice of his spring vacation (which begins in a week) to the public interest.

I have attached the revised schedule in the form of our research design timetable. Please let me know if the changes inconvenience or displease you. Otherwise, we shall proceed by the attached schedule.

5. *Work Product and Timetable*

NOTE: Unless Council deadlines require otherwise, dates below apply to submission of student work to the D.C. Project staff.

| <i>Date</i> | <i>Work Product</i> |
|--------------|--|
| February 27_ | Memorandum presenting options for intermediate appeal of denials of FOIA requests. 2nd draft. |
| March 5_ | Memorandum presenting options for statutory language on the exemption for trade secrets. |
| March 10_ | Memorandum surveying selected Federal agencies for regulations promulgated in response to Federal FOIA requirements. |
| March 12_ | Memorandum presenting options/rationales to the Committee on policy issues for the entire bill. 1st draft. |
| March 19_ | Final draft of above stated memorandum. |
| March 26_ | Committee Report with drafted statutory language for amendments as instructed by the Committee. 1st draft. |
| April '9_ | Final draft of Committee Report and drafted statutory language. |

RESEARCH DESIGN—D.C. FREEDOM OF INFORMATION ACT

D.C. Council, Committee on the Judiciary and Criminal Law—Councilmember (Chairperson): David Clarke; Staff Contact (Committee Clerk): Greg Mize.

D.C. Project: Legislative Research Center—Legal Inter: Peter Boyer; Staff Attorney: Robert Stumberg.

This design is for project administration purposes only. It does not necessarily present the position or plans of any official or employee of the Government of the District of Columbia.

1. *General Statement of Project:*

This project entails legal research primarily into Freedom of information exemptions and administration. The work will include background memoranda on selected issues, writing of a committee report, analysis of public hearings and drafting of amendments to the Council Bill (No. 1-119).

2. *Definition of Problem Area:*

Without statutory authority it is extremely difficult for a citizen to assert rights of access against a large and complex government bureaucracy.

Section 742 of the Self-Government Act (the "Sunshine Amendment") is one attempt to carry out a policy of open government by requiring all meetings of any department of the D.C. Government in which official action is taken to be open to the public. But this provision relates only to communications in governmental meetings.

A more critical concern is the availability of information upon which governmental decisions are based. The currently operative law—Commissioner's Order No. 71-370 purports to meet the need for an open information policy. The effectiveness of this Order has been questioned, both in comparison to Federal law, and on an empirical basis. In the spring of 1975, the D.C. Public Interest Research Group (DCPIRG) conducted a study of the availability of information from the District Government. A total of eighteen requests for information were submitted to various agencies. Of these, only four (22.2%) were returned with all the information requested and within the limits of the Commissioner's Order. The responses to the remaining requests did not comply with existing law.

3. *Project Goals:*

(A) Refine exemptions from FOIA disclosure requirements so as to promote maximum availability without encroaching upon clearly articulated grounds for confidentiality as are endorsed by the Committee.

(B) Develop a scheme for administration of the FOIA including sanctions which are appropriate to the nature of governmental behavior involved. Such administrative scheme should balance cost with the ultimate goals of governmental openness.

(C) Provide technical legal assistance to DCPIRG and other community groups so as to maximize citizen input on a topic which directly concerns such groups.

4. *Research Tasks and Issues:*

(A) Comparative Statutory Research of:

- (1) Commissioner's Order 71-370.
- (2) Bill 1-119.
- (3) Federal FOIA.
- (4) Selected State FOIAs.

(B) Caselaw Research Regarding Specific Exemptions: (1) Trade Secrets.

(C) District Charter analysis of Council FOIA authority over the D.C. Judiciary.

(D) Comparative research of Federal administrative regulations promulgated in response to Federal FOIA requirements.

(E) Review of legislative history of Federal FOIA and subsequent amendments with regard to critical issues debated on exemptions and administration of the Act.

5. *Work Product and Timetable:*

NOTE: Unless Council deadlines require otherwise, dates below apply to submission of student work to D.C. Project staff.

| <i>Date</i> | <i>Work Product</i> |
|---------------|---|
| January 20-- | Memorandum reviewing common law and Federal caselaw with respect to the trade secrets exemption. |
| January 23-- | Memorandum comparing options for administration and appeals processes in the Federal FOIA and those of selected states. |
| January 26 -- | Memorandum summarizing key issues of Congressional debate on Federal FOIA provisions, with questions developed for D.C. Government officials and the D.C. Bar Association in public hearings. |
| January 28-- | Public Hearings—Attend to take notes and assist with questions for witnesses. |
| February 6--- | Memorandum on whether District Charter limits Council FOIA authority with respect to the D.C. Judiciary. |
| February 13-- | Memorandum surveying selected Federal agencies for regulations promulgated in response to Federal FOIA requirements. |
| February 27-- | Memorandum to Committee for decisions on policy issues using an options/rationale format. |
| March 19---- | Draft of Committee Report with drafted statutory language for proposed amendments to Bill 1-119. |

FREEDOM of INFORMATION ACT - options format



the
D.C.
project

prepared for

David Clarke, Chairperson

Committee on the Judiciary & Criminal Law

prepared by
Peter Boyer
Legal Intern

Robert Stumberg
Staff Attorney

the d.c. project -
legislative research
georgetown university law center

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- APPENDIX F. COMMISSIONER'S ORDER NO. 71-370

the d.c. project:
LEGISLATIVE RESEARCH CENTER
georgetown university law center

**MEMORANDUM**

April 12, 1976

TO: David Clarke
Chairperson, Committee on the Judiciary and Criminal Law

FROM: Peter Boyer
Legal Intern

Robert Stumberg
Staff Attorney

RE: Review of Options for the Proposed D.C. Freedom of Information Act

I. INTRODUCTION

This memorandum was prepared as a format for consideration of various options to the provisions of the proposed D.C. Freedom of Information Act, Bill No. 1-119 (the "Dixon bill"). The format includes exact language of the competing options followed by a brief discussion of the issues. The issues are reviewed in the same sequence as they are drafted in Bill No. 1-119 so that the Committee can use this memorandum as an agenda for markup, should it so desire.

A more detailed analysis was given the issues of trade secrets exemption and appeals process---these issues are included as appendices A and B respectively. Time did not permit as thorough an analysis of certain other sections; the discussion indicates those areas which would merit further study should the Committee be interested in their adoption.

-2-

II. POLICY

Bill No. 1-119

Sec. 2 Public Policy. It is hereby declared to be the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed in every instance with the view toward complete public access.

D.C. Bar Amendment

Sec. 2 Public Policy. It is hereby declared to be the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed in every instance with the view toward complete public access, and the minimization of costs and time delays to persons requesting information.

Federal Act

No statement of policy was included in the federal act.

a. Discussion. The D.C. Bar amendment would add the phrase "and the minimization of costs and time delays to persons requesting information" to the statement of policy. This provides an operational guideline for interpretation of the bill because it follows the provisions which prevent undue delay and excessive costs, as well as the general right of access granted by the bill.

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III. DEFINITIONS

A. Scope of Bill

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|---|--|
| <p>Sec. 3 (A). Section 1-1502 of the District of Columbia Code is hereby amended by inserting the following after the final ":" in Section 13:</p> | <p>Sec. 3(A). Section 1-1502 of the District of Columbia Code is hereby amended by inserting the following after the final ";" in Section 13:</p> <p>(14) the term "public body" includes: (A) every officer, agency, department, division, bureau, board, or body in the executive branch of the Government of the District of Columbia; (B) every officer, board, commission, council, or committee in the legislative branch of the Government of the District of Columbia; and (C) every officer, judge court, board department, commission, council or agency in the judicial branch of the Government of the District of Columbia;</p> |
| <p style="text-align: center;">Federal Act (5 U.S.C. §552 (e))</p> <p>(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulating agency.</p> | |

Discussion. As introduced the bill would apply only to the executive branch of the D.C. Government. The D.C. Bar amendment would expand the coverage of the law to the legislative and

judicial branches by defining the germ "public body" to include all three branches of government.

1. Legislative Branch. Considerable support for expanding the coverage of the bill to the legislative branch was expressed at the public hearings.¹ At least eleven states have enacted freedom of information statutes that apply to both the legislative and executive branches.² A related D.C. Law, the so-called sunshine amendment, which requires all meetings of government bodies to be open to the public, applies to the legislative branch.

2. Judicial Branch. Including the judicial branch raises a number of questions which the hearings on this bill did not really address. The first is whether such a provision would be in violation of Section 602 of the Self-government Act, which limits Council's authority in the area of organization and procedure of the D.C. Courts.³ Secondly, as one witness noted, the uniqueness of the judicial branch and the nature of the adversary system suggest that further study should be undertaken before a general freedom of information bill extending its coverage to the judicial branch is approved by the committee.⁴ Three states include the judicial branch in their Freedom of information laws.⁵

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B. Public Records

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|--|---|
| (14) the term 'public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies. | (15) the term 'public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body; |

Discussion. This section recognizes that a public record is not necessarily a written document, and includes any documentary record regardless of its physical form.

C. Adjudication

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|------------------------|---|
| no definition included | (16) "adjudication" means agency process for the formulation of an order. |

Discussion. The D.C. Bar amendment would define the term adjudication, which is used in bill no. 1-119 but not defined in either the bill or the D.C. Administrative Procedure Act. The definition was taken from the Federal Administrative Procedure Act.⁶

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IX . RIGHT OF ACCESS

A. RegulationsBill No. 1-119

Sec. 4. Access to Public Records from the Mayor and agencies.

(A) Any person has a right to inspect or copy any public record of the Mayor or an agency, except otherwise expressly provided by Section 5 () of this Act in accordance with reasonable rules concerning time and place of access.

D.C. Bar Amendment

Sec. 4. Right of Access to Public Records; Allowable Costs; Time Limits.

(A) Any person has a right to inspect and, at his or her discretion, to copy any public record of a public body, except as otherwise expressly provided by Section 8 (exceptions) of this Act, in accordance with reasonable rules that may be issued after notice and comment by a public body concerning time and place of access.

Federal Act

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and

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instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made

available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

Discussion. This section is the heart of the bill. It establishes the basic right of access to public records as defined above.

1. Uniform rules. At public hearings on the bill, witnesses urged the committee to consider requiring agencies to adopt uniform rules governing time, place, and manner of access to information.⁷ The federal act requires agencies to publish rules and procedures to be followed in making information requests.

The D.C. Bar amendment would require such rules to be issued only after notice and comment by the public. The Bar proposal would not require the issuance of such rules, however. The

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Committee might consider the deletion of the word "may" and the insertion of the word "shall" in its place.

2. Discretion to inspect or copy. The D.C. Bar amendment would assure that a requestor would have the option to either inspect or reproduce, at his option, a requested record. Such a change would insure that a person may have access to the original of a record, not just a reproduction which may not fully reveal all markings, and make clear that one need not incur the costs of reproduction if simple inspection will adequately serve the requestor's purpose.⁸

3. Indexes. The federal law requires each agency to make available for public inspection and copying current indexes providing identifying information as to matters promulgated after July 4, 1967. This requirement was adopted as part of the 1974 amendments to the Federal Act. As the Senate Committee reporting the bill noted, "If the existence of a document is unknown, disclosure of its contents will never be requested."⁹ The inclusion of an indexing requirement in the D.C. bill was called "essential" by one witness.

B. Fees

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|---|---|
| (B) The Mayor or an Agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records. | (C) The public body may establish and collect fees not to exceed the actual, direct cost of searching for or making |

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Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public. But fees shall not be charged for examination and review to determine if such documents are subject to disclosure.

copies of public records. But fees shall not be charged for examination and review to determine if such public records, or portion of public records, are subject to disclosure. Public records shall be furnished without charge or at a reduced charge when furnishing the information can be considered as primarily benefitting the general public.

Federal Act

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver of reduction of the fee is in the public interest, because furnishing the information can be considered as primarily benefitting the general public.

Discussion. As introduced, the bill provides that the executive branch may establish and collect fees not to exceed the actual cost of searching for and making copies of records. Fees may be waived where the Mayor or the agency determines that furnishing the information can be considered as primarily benefitting the general public.

Witnesses at the public hearings on the bill recommended that a uniform schedule of fees be established for each agency, so that requestors would be aware of any and all fees in advance.¹⁰

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The federal act contains such a provision.

2. Mandatory waiver. The D.C. Bar amendment would require waiver of fees where disclosure would primarily benefit the general public. The Bar Association believes that with such a provision it would be an abuse of discretion to deny waivers and fee reductions to journalists, indigents, of public interest groups.¹¹

3. Primarily benefiting the public. None of the provides standards or guidelines as to what constitutes information which would benefit the general public. The committee might want to consider establishing some guidelines in this area. For example, the Committee might want to make explicit that any request from an Advisory Neighborhood Commission be deemed a request for information which would primarily benefit the general public.

C. Time Limitations

Bill No. 1-119

(C) The Mayor or an agency, upon request for records made under this Act, shall within fifteen days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefore. Such a determination shall constitute the final opinion of the Mayor or an agency as to the public availability of the requested public record.

D.C. Bar Amendment

(B) The public body, upon request for public records made under this Act, shall within fifteen days (excepting Saturdays, Sundays, and legal holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefore. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record.

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Any failure on the part of a public body to comply with a request under subsection (A) within the time provision of this subsection shall be deemed a denial of the request.

Federal Act

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and if the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If an appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request--

(i) the need to search for and collect the requested records from field facilities or other establishment that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and district records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted

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with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with regret to such request if the agency fails to comply with the applicable time limit provision of this paragraph. If the government can show exceptional circumstances exist and that the agency is exercising due diligence in regarding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of any request for records under this subsection shall set forth the names and titles or position of each person responsible for the denial of such request.

Discussion. The bill as introduced requires an agency to respond within fifteen days to a request for public records, notifying the requestor of determination of his request and the reason therefore.¹²

1. Ten days limit. The federal act requires a response within ten days, but allows for an extension for ten additional days where "unusual circumstances" warrant. Witnesses at the public hearings endorsed a ten day time limit.¹³

2. Failure to respond deemed denial. To enforce the time limitation, it was urged that failure to respond within the time provision be deemed a denial of the request.¹⁴ Without this provision there is no remedy for a requestor who has not received a response within the allotted time.

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3. Limitation on Appeal. The federal act includes a time limitation on the disposition of an appeal. Such a limitation prevents delaying tactics by the agency in reviewing an appeal of a denial. The committee might want to include such a provision in the D.C. bill.

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V. DENIALS

| | |
|---|--|
| <p><u>Bill No. 1-119</u></p> <p>(C) The Mayor or an agency, upon request for records made under this Act, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the Mayor or an agency as to the public availability of the requested public record.</p> | <p><u>D.C. Bar Amendment</u></p> <p>Sec. 10. Letters of Denial</p> <p>(A) Denial by a public body of a request for public records from that public body shall contain at least the following:</p> <p>(1) the specific reasons for the denial including citations to the particular exception(s) under section 8 of this Act relied on as authority for the denial;</p> <p>(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and</p> <p>(3) notification to the requester of any administrative or judicial right to appeal under section 5(A) of this Act.</p> <p>(B) Each public body of the District of Columbia shall maintain a file of all letters of denial of requests for public records from that public body. This file shall be made available to any person on request.</p> |
| <p><u>Federal Act</u></p> <p>(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--</p> <p>(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination;</p> | |

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Discussion. As introduced, the bill requires only that a denial letter shall state the reason for the denial. Testimony at the public hearings on the bill indicated that the following information should be included in every letter of denial:

- (1) the reason(s) for the denial
- (2) the name of the person responsible for determining that a denial was warranted
- (3) notification to the requestor of his or her right to appeal the denial.

All of these things are presently required by Commissioner's order No. 71-370, with the exception of the requirement that each denial name the official who actually makes the decision to deny. The naming of such official is required under the Federal Act. Complying with these provisions should not add any significant burdent upon public bodies, and will allow determinations to be made as to whether there has been an inordinate number of denials within any particular public body.

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VI. EXEMPTIONS

A. Trade SecretsBill No. 1-119

Sec. 5. Exemptions.

(A) The following matters may be exempt from disclosure under the provisions of this Act:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

D.C. Bar Amendment

Sec. 8. Exceptions from Mandatory Disclosure.

(A) The following matter may be withheld from disclosure under the provisions of this Act, but these exceptions from mandatory disclosure only permit, and never require, withholding by a public body:

(1) Confidential commercial or financial information to the extent that disclosure would:

(a) result in substantial and unfair competitive injury to the submitter of that information to a public body, if the submitter has specifically requested that the information not be made public, or, if submitted prior to the effective date of this Act, such a request is reasonably to be implied from the circumstances of the submission; or

(b) lead to serious, undue, financial speculations in currencies, securities, or commodities.

Federal Act

(b) This section does not apply to matters that are--

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

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Discussion. See Appendix A for a detailed analysis of the options for this exemption. In summarized form the options are:

- (1) Bill No. 1-119 - Limit the exemption to common law trade secrets.
- (2) Federal Act - Exempt trade secrets as well as privileged or confidential commercial or financial information.
- (3) D.C. Bar Proposal - Exempt commercial or financial information only to the extent that disclosure would result in competitive injury to the submitter. The bar proposal would also exempt release where disclosure would result in financial speculations in currencies or commodities.

B. Personal Privacy

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|--|---|
| (2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. | (2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. |
| <p style="text-align: center;">Federal Act</p> <p>(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy:</p> | |

Discussion. Since the major thrust of the bill is to mandate disclosure, an exemption is needed to protect the individual's right of privacy. As the D.C. Bar Association noted, this right enjoys

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some constitutional protection. Comments, of D.C. Bar, at 22-23. However, to prohibit disclosure of any information that might be labeled personal would make the exemption too broad.

Clearly unwarranted invasion. Information, such as the civil service grade level of government employees, the names of persons convicted of crimes, the names of licensed individuals, doctors and lawyers is all personal information. However, few would argue that the disclosure of these matters would constitute an invasion of privacy. To resolve this problem the bill provides, as does the federal law that only where the disclosure of documents would constitute a clearly unwarranted invasion of personal privacy may they be withheld from public disclosure. See Model State Freedom of Information Statute, comments on Section 4, Exemptions. (The language of the model act is identical to Bill No. 1-119).

C. Investigatory Records

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|---|---|
| <p>(3) Records of law enforcement agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:</p> <p>(a) disclosing identity of informants not otherwise known;</p> <p>(b) the premature release of information to be used in a prospective law enforcement action;</p> | <p>(3) Public records of law enforcement agencies that were compiled as part of an investigation for law enforcement purposes, if the disclosure of the information would harm the agency by:</p> <p>(a) disclosing the identity of informants not generally known outside the government;</p> <p>(b) the premature release of information to be used in a pro-</p> |

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(c) disclosing investigatory techniques not otherwise known outside the government;

(d) deprive a person of a right to a fair trial or an impartial adjudication;

(e) constitute an unwarranted invasion of personal privacy;

(f) endanger the life or safety of a law enforcement officer.

spective law enforcement action;

(c) disclosing investigatory techniques not generally known outside the government;

(d) depriving a person of a right to a fair trial or an impartial adjudication;

(e) endangering the life or safety of a law enforcement officer.

Federal Act

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(A) interfere with enforcement proceedings,

(B) deprive a person of a right to a fair trial or an impartial adjudication,

(C) constitute an unwarranted invasion of person privacy,

(D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(E) disclosure investigative techniques and procedures, or

(F) endanger the life or physical safety of law enforcement personnel;

ACLU Amendment

Strike (3)(C): disclosing investigatory techniques not otherwise known outside the government.

Discussion. The bill as introduced exempts records of law enforcement agencies that were compiled in the process of detecting and investigating crime if disclosure would harm the agency in one of six specific ways. Comments on this section of the bill suggested that civil and regulatory enforcement records should also be protected, and that consideration be given to whether the

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divulged information may be harmful to the individual concerned as well as the agency. Comments of D.C. Bar, at 28; Statement of William A. Robinson, Assistant Corporation Counsel, D.C.; before the Judiciary and Criminal Law Committee, Council of the District of Columbia, on Bill No. 1-119, at 2.

The American Civil Liberties Union urged that the portion of the exemption that would exempt "investigatory techniques not otherwise known outside the government" should be eliminated entirely. "It is now known that the Metropolitan Police Department has engaged in extremely questionable, if not offensive, intelligence tactics within the past decade. There can be no justifiable reason for withholding from the general population information regarding such techniques." Comments of the American Civil Liberties Union of the National Capital Area on D.C. Council Bill No. 1-119, A proposed Freedom of Information Act, at 3.

This exemption is a very important one, and the committee has not had the opportunity in the hearings or in its consideration of the bill to give it serious study. The committee might wish to consider that the federal model was adopted in 1974 after careful study and deliberation.

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D. Other Exemptions. The following additional exemptions were suggested for the committee's consideration:

1. Inter-public body and intra-public body communications.

| <u>D.C. Bar Amendment</u> | <u>Federal Act</u> |
|--|---|
| <p>(4) Inter-public body and intra-public body communications, but only to the extent that they do not fall within Section 6, involving:</p> <p>(a) deliberations among judges concerning prospective judicial decisions;</p> <p>(b) information routinely protected by the attorney work-product or attorney-client privileges; and</p> <p>(c) recommendations made by advisors on policy-making, adjudicatory, rule-making, or judicial decisions, provided that this subsection shall not protect from disclosure inter-public body communications between any two or three branches of the District of Columbia government as defined in subsections (A), (B), and (C) of Section 3 of this Act.</p> | <p>(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;</p> |

Discussion. The D.C. Bar amendment would generally protect recommendations, but not facts or analysis of facts, from disclosure. It would protect such things as communication of or with attorneys concerning pending or prospective litigation, and policy making deliberations between a chief and his subordinates. The Bar proposal is more specific, and thus more narrow in its scope, than the federal act which has been criticized as being too broad. See Comments of D.C. Bar, at 25-26.

2. Test QuestionsD.C. Bar Amendment

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

Federal Act

No such provision

Discussion. This section would permit a public body to withhold test questions and answers, until they have been administered as part of an examination, in order to maintain the fairness and the validity of the results. A similar provision is included in the state Freedom of Information laws in California, Maryland and Oregon.¹⁵

3. Records otherwise exempted from disclosure by law.Federal Act

(3) specifically exempted from disclosure by statute;

D.C. Bar Amendment

No such provision

Discussion. The adoption of this provision was urged by the Corporation Counsel in its testimony on Bill No. 1-119.¹⁶ The Corporation Counsel pointed out the possibility of conflict between the bill as introduced and other sections of the D.C. Code. For

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example under the provisions of D.C. Code Sec. 16-2334 juvenile records are now exempted from public disclosure.¹⁷ Similarly, Section 27-1564 of the D.C. Code prohibits the public release of tax returns of individuals and businesses.¹⁸

The D.C. Bar Association noted the advantage of making all rights of access to records turn on one statute, in that the law is made readily available to government employees and citizens alike without the need of a lawyer to research the subject.¹⁹

If the Council intends that this bill should govern only the release of information not otherwise covered by law, then an exemption for materials otherwise exempted by statute should be included. A number of states have included such an exemption.²⁰ If, on the other hand, the Council intends that this bill should supercede all other statutory provisions regarding the release of information, stronger language should be incorporated to make that intent clear.

4. National Security.

| <u>Federal Act</u> |
|--|
| (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order; |
| <u>D.C. Bar Amendment</u> |
| No national security exemption included |

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Discussion. Because of its location at the seat of the federal government, the D.C. government might conceivably obtain access to information which is classified as national security information under federal law. For example, contingency plans of cooperation between the Metropolitan police and the FBI or the CIA to deal with assassination plots or sabotage might be classified as national security information under federal law.²¹ Unless this information fell within the investigatory records exemption, it would subject to disclosure under the bill as introduced.

B. Segregable portions

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|---|--|
| No provision | (B) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (A). |
| <p style="text-align: center;">Federal Act</p> <p>Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.</p> | |

Discussion. Most of the witnesses who testified at the hearings on the bill pointed out the need for a subsection providing that where portions of a document were exempt from disclosure, the segregable non-exempt portion should be disclosed after deletion of exempt materials has been made.²² The federal act so provides. Adoption

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of such a provision would insure that an entire document could not be withheld because a portion of it contained exempted materials.

VII. NEW SECTION - RECORDING OF FINAL VOTES

| | |
|---|---|
| <p><u>Bill No. 1-119</u></p> <p>No such provision</p> | <p><u>D.C. Bar Amendment</u></p> <p>Sec. 6. Recording of final Votes. Each public body having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that public body.</p> |
| <p><u>Federal Act</u></p> <p>(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.</p> | |

Discussion. This provision would require that the vote of each member of a public body be recorded and disclosed on an individual basis. It would prevent the use of such phrases as "a majority voted for X", which do not specifically reveal which members voted for a given position.

VIII. INFORMATION WHICH MUST BE MADE PUBLIC

| | |
|--|--|
| <p><u>Bill No. 1-119</u></p> <p>Sec. 6. Information Which Must be Public. Without limiting the</p> | <p><u>D.C. Bar Amendment</u></p> <p>Sec. 7. Information Which Must be Public. Without limiting the</p> |
|--|--|

meaning of other sections of this Act. The following categories of information are specifically made public information:

(1) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

(2) administrative staff manuals and instructions to staff that affect a member of the public;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) those statements of policy and interpretations of policy Acts, and rules which have been adopted by the Mayor or an agency;

(5) planning policies and goals, and interim and final planning decisions;

(6) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opinion upon, the rights of the District, the public, or any private party;

(7) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(8) the minutes of all proceedings of all agencies and all votes at such proceedings.

meaning of other sections of this Act, the following categories of information are specifically declared to be public information, except in extraordinary circumstances where an exception from disclosure applies and the policy reasons for that exception clearly outweigh the public interest in disclosure in the particular case:

(1) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of a public body;

(2) administrative staff manuals and instructions to staff that affect a member of the public;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) those statements of policy and interpretations of policy, Acts and rules which have been adopted by a public body;

(5) correspondence and materials referred to ~~therein~~, by and with a public body relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) the minutes of all proceedings of all public bodies and all votes of each member of each public body at such proceedings;

(8) facts, analysis or evaluation of facts, or summaries of facts.

Federal Act

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

Discussion. This section specifies certain categories of information which must be made public. It represents a legislative determination that certain kinds of information should be made available to the public on a routine basis.

1. Ethnicity. The first category which is specifically made public information includes the ethnicity of all employees and officers of the Mayor and an agency. Although the issue was not raised at the hearings on the bill, the staff believes there may be constitutional problems, as well as administrative problems, in requiring the release of the ethnicity of an employee of the District. If the Committee so desires, a legal analysis of this issue will be prepared.

2. Technical Changes. The D.C. Bar proposed extensive technical changes to this section of the bill, to clarify the meaning of the provisions.

3. Factual Summaries. The D.C. Bar Amendment would add the additional category of "facts, analysis or evaluation of facts, or summaries of facts." This subsection would insure that all fac-

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tual or evaluative materials, but not all policy recommendations, which are considered by government decisionmakers will be made available to the public so that the quality of those decisions may be properly evaluated.

IX. REVIEW OF A DENIAL

Bill No. 1-119

Sec. 7. Enforcement.

(A) Any person denied the right to inspect a public record of the Mayor or an agency may petition the Corporation Counsel to review the public record to determine if it may be withheld from public inspection, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the trial court. If the Corporation Counsel declares the document to be a public record and the government body continues to withhold the record, the Corporation Counsel shall bring suit in the name of the District of Columbia in the trial court to enjoin the agency from withholding the records and to compel the production of documents for the person seeking disclosure.

(B) In any suit filed under section 7(A) of this Act, the court has jurisdiction to enjoin the Mayor or an agency from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the Mayor or an agency to sustain its action. The court may view the documents in controversy in camera before making a decision. Any non-compliance with the order of the

D.C. Bar Amendment

Sec. 5. Administrative Appeals and Enforcement.

(A) Any person denied the right to inspect a public record of a public body may petition the Corporation Counsel to review the public record to determine whether it may be withheld from public inspection. This determination shall be made within 20 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Corporation Counsel denies the petition, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Corporation Counsel decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record. Alternatively, said person may demand that the Corporation Counsel

court may be punished as contempt of court.

(C) Except as to causes the court considers of greater importance, proceedings arising under Section 7(A) of this Act take precedence on the docket over all other causes and shall be assigned for hearing, trial or argument at the earliest practicable date and be tried in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he or she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him or her reasonable attorney fees or an appropriate portion thereof.

bring suit in the name of the District of Columbia in the Superior Court for the District of Columbia for the same purposes. The Corporation Counsel shall bring suit within 10 days (excluding Saturdays, Sundays, and legal holidays) of the request. The requestor shall have an absolute right to intervene as a full party in said suit at any time.

(B) In any suit filed under section 5(A) of this Act, the Superior Court for the District of Columbia has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and other persons, including the requestor, counsel and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders. Upon motion and consent of all parties, if the court makes a written finding that extraordinary circumstances require the proceedings, or portions thereof, to be closed to the general public and that such closed proceedings are in the presence of all parties and counsel at which the general public is excluded. Any noncompliance with the order of the court may be punished as contempt of court.

(C) Except as to cases the court considers of greater importance, proceedings arising under section 5(A) of this Act, including appeals take precedence on the docket over all other cases and shall be

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assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he or she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him or her reasonable attorney fees or an appropriate portion thereof.

Federal Act

1. Intermediate appeal

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

2. Judicial Review

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under

this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

New York Law

8. Any party denied access to a record or records of an agency or municipality may appeal such denial to the head or heads, or an authorized representative, of the agency or municipality. If that person further denies such access, his reasons therefore shall be explained fully in writing within seven business days of the time of of such appeal. Such denial shall be subject to review in the manner provided in article seventy-eight of the civil practice law and rules.

Discussion

1. Appeals Process. For detailed analysis of the options for intermediate appeals process prior to judicial review see Appendix B.

2. Judicial Review. Some provision for final judicial review of a denial is included in each of the above proposals. All of them follow the model of the Federal Act as amended in 1974.

a. Jurisdiction. The bill specifically grants jurisdiction upon the trial court to enjoin the withholding of records contrary to the provisions of the act. The D.C. Bar proposal would specify the Superior Court of the District of Columbia as the Court to hear these cases.

b. De Novo Review. The provision for de novo review assures that the Court is not limited in any way by prior actions of

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the agency, and that it will make its own determination of facts and law independently of what occurred at the administrative level.

c. Burden of Proof. The bill provides that the burden of proof shall be on the public body seeking to sustain the denial of access.

d. In Camera Inspection. The bill provides that the court may in its discretion review in chambers any records whose disclosure is sought to be necessary. The D.C. Bar Association recommends adding a clause to provide that, in the discretion of the court, plaintiff, his attorney, and necessary expert witnesses may view the records sought, subject to necessary protective orders.

e. Noncompliance Punishable as Contempt. To ensure that the order of the court is binding upon the public body, the bill provides that noncompliance with the court order shall be punishable as contempt.

f. Expedited Trial. Subsection (C) provides that suits brought under the statute shall take precedence over other matters on the court's docket, so that the value of eventual disclosure will not be destroyed by judicial delays.

g. Attorneys Fees. Subsection (D) provides that if a person is forced to go to court and prevails, the government and not the citizen shall pay the full expenses of the litigation. If the citizen prevails in part, the awarding of reasonable attorneys fees is left in the discretion of the court.

X. PENALTIES

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|---|---|
| Sec. 8. Penalties. Any official who violates the provisions of this Act shall be subject to \$1000 fine for each offense. | Sec. 9. Penalties. Upon motion, notice and hearing, any public official or employee who withholds records or denies a request for records without a reasonable basis in law shall be subject to a \$1000 fine for each offense. |

Federal Act

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

Discussion. Most of the witnesses who testified at the hearings on the bill felt that a \$1000 fine for each violation of the provisions of the act was not an appropriate penalty, particularly without a showing of wilfulness, or arbitrariness.^{23/} The D.C. Bar commented that even an innocent mistake on a difficult question of law concerning

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whether a record is exempted from mandatory disclosure could result in the person making the mistake being fined, under the provision for penalties in the bill as introduced.

1. Reasonable Basis in Law Standard. The D.C. Bar proposal would subject to a fine any public official who denies a request without a reasonable basis in law. Such a standard strikes a balance between a requirement of willfulness, which is frequently difficult to prove, and a strict liability standard.

2. Due Process Hearing. The D.C. Bar Amendment would provide for sanctions to be imposed only after the due process requirements of notice and a hearing are provided to the official or employee charged with violation of the act.

3. Administrative Sanctions. The federal act provides for administrative disciplinary action through the Civil Service Commission.

XI. OVERSIGHT

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|---|-----------------------------|
| No provision for oversight. | No provision for oversight. |
| <p data-bbox="366 1100 508 1123" style="text-align: center;"><u>Federal Act</u></p> <p data-bbox="42 1146 897 1263">(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--</p> <p data-bbox="42 1266 909 1333">(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;</p> | |

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(2) the number of appeals made by persons under subsection (a) (6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a) (4) (F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of the case, and the cost, fees, and penalties assessed under subsection (a) (4) (E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

New York Law

9. a. A committee on public access to records is hereby created, to consist of the commissioner of the office of general services or his delegate whose office shall act as secretariat for the committee, the director of the division of the budget or his delegate, the commissioner of the office for local government or his delegate and four other persons who are not elected or appointed officials or employees of any other agency, appointed by the governor, at least two of whom are or have been representatives of the news media. Of the four other persons first appointed, one shall be appointed for a term of four years, one for a term of three years, one for a term of two years and one for a term of one year. Thereafter their respective successors shall each be appointed for terms of four years. The committee shall meet from time to time to:

i. advise agencies and municipalities regarding this article by means of guidelines, advisory opinions, regulations or other means deemed advisable;

ii. promulgate and issue rules and regulations in conformity with this article in relation to subdivisions two and four of this section; and

iii. recommend changes in the freedom of information law in order

to further the purposes of this article.

b. The four persons appointed by the governor shall be entitled to receive reimbursement for actual expenses incurred in the discharge of their duties.

A. Need. The need for some sort of oversight over implementation of the law was underscored by the testimony of the D.C. Public Interest Research Group (PIRG). In a study of the availability of public records from the District Government, PIRG found that the present D.C. Freedom of Information authority, Commissioner's Order No. 71-370, was not followed in many respects. "If this bill is enacted in its proposed form, D.C. PIRG feels that the Council could be taking a step backwards from the present Commissioner's Order. This problem could be avoided by a strong effort to ensure that the proposed procedures are carefully and systematically incorporated into the functioning of the City's government." Testimony of Bob Fisher and Suki Parks on Behalf of the D.C. Public Interest Research Group Before the Committee on the Judiciary and Criminal Law of the D.C. City Council, January 28, 1976, at 6.

B. Legislative Oversight. The Congress amended the federal Freedom of Information Act in 1974 to require agencies to submit an annual report to Congress. "[T]he collection and analysis of these reports, providing the occasion for the Congress to identify recalcitrant agencies, recurring misinterpretation of the mandates of the FOIA, and undue delays can go a long way toward encouraging adherence to the Act." Senate Report No. 93-854, 93d Congress, 2d Session, at 32-33.

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C. Commission Oversight. The D.C. Public Interest Research Group has recommended that an independent Commission be established, along the lines of the New York Committee on Public Access to Records. PIRG feels that such a body would be the most effective mechanism for assuring that the act was properly implemented throughout the District government.

XII. CODIFICATION AND REPEALER

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|---|--|
| <p>Sec. 9(a). This Act shall be codified in Chapter 15 of Title 1 of the District of Columbia Code, as Section 1-1511.</p> <p>(b) Commissioner's Order No. 71-370, issued November 2, 1971, is hereby repealed.</p> | <p>Sec. 11(A). Codification and Repealer. This Act shall be codified in Chapter 15 of Title 1 of the District of Columbia Code, as Section 1-1511.</p> <p>(B) Commissioner's Order No. 71-370, issued November 2, 1971, is hereby repealed. All laws of the District of Columbia that are inconsistent with this Act are to the extent of the inconsistency hereby repealed.</p> |

Discussion. Section 9 of the bill as introduced codifies the Act in Title 1 of the D.C. Code, Section 1-1511. It also repeals Commissioner's Order No. 71-370.

A. Repeal of Inconsistent Laws. The D.C. Bar Association recommends adding an additional clause to this section of the bill which would repeal all laws inconsistent with the Act. The amendment would ensure that all questions of disclosure or non-disclosure will be determined solely with respect to this statute, and thus be readily

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accessible to the public.

B. Supersession of inconsistent laws. The staff feels that a blanket repealer of all laws inconsistent with this act might create questions of interpretation regarding whether or not other laws remain in effect. If another law contained one minor section which is inconsistent with this act and did not have a severability clause, the other law could be held to be repealed in its entirety. If the Committee intends that this act shall be the sole authority for release of information, the same purpose could be accomplished by inserting a provision to the effect that this act supersedes all other laws to the extent that they are inconsistent with it.

XIII. LIMITATIONS ON WITHHOLDING INFORMATION

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|--|---|
| No provision | (C) No public record shall be withheld for any reason other than those that are specifically enumerated in subsection (A) [Exemptions from Mandatory Disclosure]. |
| <p data-bbox="381 1068 521 1095" style="text-align: center;"><u>Federal Act</u></p> <p data-bbox="55 1116 946 1210">(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.</p> | |

A. Limitations on Withholding From Public. This section would

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expressly provide that a public record shall not be withheld unless it falls within one of the specifically enumerated exemptions to the act.

B. Limitations on Withholding from Legislative Branch. The federal act includes a clause stating that the act shall not be used authority to withhold information from Congress. "This basically restates the fact that the FOIA, which controls public access to government information, has absolutely no effect upon Congressional access to government information." Senate Report No. 93-854, 93d Congress, 2d Session, at 32-33. The Committee may wish to include such a provision to insure that information is not withheld from the Council based upon this act.

XIV. EFFECTIVE DATE

| <u>Bill No. 1-119</u> | <u>D.C. Bar Amendment</u> |
|--|---|
| Section 10. This Act shall take effect pursuant to the provisions of Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act. | Sec. 12. Effective Date. This Act shall take effect pursuant to the provisions of Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act. |

Discussion. This section reserves to Congress the right to disapprove this act by concurrent resolution within 30 days from the date it is transmitted to the Speaker of the House and the President of the Senate.

NOTES

1. Comments of D.C. Bar Association, Division I, Committee on Access to Government Information Regarding Bill No. 1-119: A Proposed Freedom of Information Act for the District of Columbia, at 6. See also Testimony of Bob Fisher and Suki Parks on Behalf of the D.C. Public Interest Research Group Before the Committee on the Judiciary and Criminal Law of the D.C. City Council, at 2.
2. Comments of D.C. Bar, at 6.
3. District of Columbia Self-Government and Governmental Reorganization Act, Section 602(a)(4).
4. Comments of D.C. Bar, note 1 supra, at 8.
5. Ibid, at 7.
6. 5 United States Code §551(7).
7. Comments of the American Civil Liberties Union of the National Capital Area on D.C. Council Bill No. 1-119, A Proposed Freedom of Information Act, at 3.
8. Comments of D.C. Bar, note 1 supra, at 10.
9. S. Rep. No. 93-854, 93d Congress, 2d Session, at 8.
10. Testimony of Bob Fisher and Suki Parks, note 1 supra, at 2.
11. Comments of D.C. Bar, note 1 supra, at 12-13.
12. Council Bill No. 1-119, Section 4(A).
13. Comments of D.C. Bar, note 1 supra, at 13.
14. Ibid.
15. Boyer and Stumberg, An Overview: The Proposed D.C. Freedom of Information Act; D.C. Project: Legislative Research Center, December 8, 1975, at 9.
16. Statement of William A. Robinson, Assistant Corporation Counsel, D.C., Before the Judiciary and Criminal Law Committee, Council of the District of Columbia, on Bill No. 1-119, at 1-2.
17. Title 16, District of Columbia Code, §16-2334.
18. Title 27, District of Columbia Code, §27-1564.

19. Comments of D.C. Bar, note 1 supra, at 28.
20. See for example New York, Oregon, and Maryland. For discussion of this issue see Boyer and Stumberg, note 15 supra, at 7-8.
21. See Boyer and Stumberg, note 15 supra, at 7.
22. Comments of D.C. Bar, at 29. See also Common Cause Testimony on the Freedom of Information Act of 1976, Bill No. 1-119, by Maureen Limpert, Before the Council of the District of Columbia's Committee on the Judiciary and Criminal Law, January 28, 1976, at 3. Testimony of Bob Fisher and Suki Parks, note 1 supra, at 4.
23. "[W]e would suggest suspension or removal from office as more fitting penalties for knowing and willfull violations of the Freedom of Information Act." Common Cause Testimony on the Freedom of Information Act of 1976, Bill No. 1-119, By Maureen Limpert, Before the Council of the District of Columbia's Committee on Judiciary and Criminal Law, January 28, 1976, at 4.
"[T]o subject a public official to criminal penalties simply because he or she makes a wrong guess about what is required to be disclosed to an inquiring citizen is a Draconian kind of proposal that has no constructive purpose." Comments of the American Civil Liberties Union of the National Capital Area on D.C. Council Bill No. 1-119, A Proposed Freedom of Information Act, at 7.

APPENDIX A - OPTIONS FOR STATUTORY LANGUAGE:
THE TRADE SECRETS EXEMPTION TO THE FOIA.

I. Background. This memorandum presents four options for statutory language for the exemptions for trade secrets in the Freedom of Information Act, Council Bill No. 1-119. The options are presented with the source, the probable construction given by the courts, and policy considerations where relevant.

II. Analysis.

A. Option 1. The Dixon Bill As Introduced. The Dixon bill as introduced exempts from disclosure:

"(1) Trade secrets, which are defined as patented, secret commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing compounding, treating, or processing of articles or materials which are trace commodities obtained from a person and which are generally recognized as confidential."

Council Bill No. 1-119, §5 (A)(1). The language of the section is adopted from the Model State Freedom of Information Statute, the drafters of which noted: "Trade secrets are of value to businesses and their value is lost if disclosed." Model State Freedom of Information Statute, Comments to Section 4, Freedom of Information Clearinghouse, Washington, D.C. The definition is the narrow common law definition of a trade secret. U.S. v. U.S. Tariff Commission, 6 F.2d 491 (D.C. Cir. 1925).

1. Advantages. This options limits the exception for business information to the narrow category of trade secrets. Keeping non-trade secret information from the public causes market

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imperfections which often result in higher prices and fewer products, without any compensating public benefits such as the promotion of innovation. Comments of the D.C. Bar, Division I, Committee on access to Government Information, Regarding Bill No. 1-119: A proposed Freedom of Information Act for the District of Columbia, at 17.

This option has the advantage of being precise in its coverage, leaving little room for dispute as to its meaning. Comments of D.C. Bar, supra at 18. Precise in this case also means narrow. See Memorandum, the "Trade Secrets" exception to the D.C. Freedom of Information Act, Council Bill No. 1-119, January 27, 1976.

2. Disadvantages. The chief disadvantage of this provision is its scope, which is restricted to common law trade secrets. There may be valid reasons for protecting other kinds of business data. There is a general feeling among businessmen that it is unfair for the government to require a business to furnish the government with information which the business considers to be proprietary and then to turn that information over to the business' competitors. The Chesapeake and Potomac telephone company expressed that concern in a recent communication with the Judiciary Committee:

"...[t]he Company [C&P] is concerned about the uninhibited access of the public, including the competitors of the company, to the information which it submits under compulsion

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of law to the P.S.C." Letter from Delano Lewis, C&P Telephone Company to David Clarke, Committee of the Judiciary and Criminal Law, January 15, 1976.

The following types of information which are exempted under the federal act, would probably not be exempted under the Dixon bill as introduced: sales profits and marketing data, credit reports, statements disclosing cost accounting principles. Sterling Drug v. FTC, 450 F.2d 698 (D.C. Cir. 1971). Benson v. General Services Administration, 289 F. Supp. 590 (W.D. Wash. 1968), aff'd on other grounds 415 F.2d 878. Petkas v. Staats, 364 F.Supp. 680 (D.C. Dist. Col. 1973).

B. Option 2. The Federal Model. This option would adopt the language of the federal act and incorporate it into the bill in the form of the following amendment:

Strike §5(A)(1) in its entirety and substitute the following:

"(1) trade secrets and commercial and financial information obtained from a person and privileged or confidential."

1. Advantages: The chief advantage of this option is that by incorporating the language of the federal act, the Council will be incorporating a well established body of federal caselaw into the District's new law. "Many courts have already construed the provisions of the federal act and thereby given a clarifying definition of its requirements. Such court precedents would

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serve as a useful guide in interpreting and construing such an act, if it were adopted for the District. Statement of William A. Robinson, Assistant Corporation Counsel, D.C. before the Judiciary and Criminal Law Committee, Council of the District of Columbia, on Bill No. 1-119.

The federal act broadens the exemption beyond the common law trade secret to include "commercial and financial information". This language would satisfy the concerns of the business community by assuring them that some proprietary information that they submit will be protected. "The Company [C&P Telephone] believes the best solution is to adopt the language of 5 U.S.C. §552 (b) (4), the Federal Freedom of Information Act." Letter from Delano Lewis, C&P Telephone Company to David Clarke, Committee on the Judiciary and Criminal Law, January 15, 1976.

2. Disadvantages. Adopting the federal model may result in accepting certain provisions which are designed for a large federal bureaucracy and do not take into account the differences between a national and a municipal government. "We think that Bill No. 1-119 sensibly departs from the federal Freedom of Information Act after which it is modelled in respects which importantly distinguish the District of Columbia Government from the federal government." Comments, of the American Civil Liberties Union of the National Capital Area on D.C. Council Bill No. 1-119 a proposed Freedom of Information Act.

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The federal exemption may also be unnecessarily broad. "...[B]usinesses generally consider almost all information about a business, no matter how innocuous, to be "proprietary". Often the information which they most desire to keep secret is that which the public most deserves to know." Comments of the D.C. Bar, Division I, Committee on Access to Government Information, Regarding Bill No. 1-119: A Proposed Freedom of Information Act for the District of Columbia, at 18.

C. Option 3. D.C. Bar Amendment. The D.C. Bar Committee on Access to Government Information recommends the following amendment:

Strike 5(A)(1) in its entirety and substitute the following:

- (1) confidential commercial or financial information to the extent that disclosure would:
 - (a) result in substantial and unfair competitive injury to the submitter of that information to a public body, if the submitter has specifically requested that the information not be made public, or, if submitted prior to the effective date of this Act, such a request is reasonably to be implied from the circumstances of the submission; or
 - (b) lead to serious, undue, financial speculations in currencies, securities, or commodities.

(1) Advantages. The D.C. Bar has attempted to strike a balance between competing public and private interests, giving adequate protection to businesses without unnecessarily keeping important business information from the public. Comments, D.C.

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Bar, supra at 22. It would limit the exemption to situations where disclosure would result in substantial or unfair competitive injury to the submitter or lead to undue financial speculation in currencies, securities, or commodities.

2. Disadvantages. The D.C. Bar's proposal is a completely new one which does not have the benefit of any caselaw interpreting it. Phrases like "substantial and unfair competitive injury", reasonably to be implied from the circumstances", and "serious, undue, financial speculation" are open to a lot of interpretation and would probably result in litigation over their meaning.

D. Option 4. Judicial Interpretation of Federal Act.

This amendment would read as follows:

"Strike Section 5(A)(1) in its entirety and substitute the following: trade secrets; and commercial and financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained."

1. Advantages. This option codifies the judicial interpretation of the federal act and clarifies the meaning of the exemption. The federal act used the phrase "obtained from a person" which has been held to mean obtained from someone outside of the government rather than information generated from within an agency. Consumers Union of the United States Inc. v. Veterans Administration, 301 F. Supp. 796 (S.D.N.Y. 1969), appeal dismissed 436 F.2d 1363.

The phrase "privileged or confidential" in the federal act has been the subject of much confusion. Some courts interpret this phrase to protect any commercial information which is "customarily" considered to be confidential, but the Court of Appeals for the District of Columbia Circuit has held that in addition, the disclosure of such information must be:

"likely to have either of the following effects (1) impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C.Cir. 1974).

Adopting this language would make clear the Committee's intention as to the meaning of the phrase, and eliminate the possibility of confusion in the future.

2. Disadvantages. By inserting new language, the Committee is in effect making the body of federal caselaw on this exception inapplicable. The cases on this point are split anyway. The committee report could be drafted to indicate that the intent of the change was to codify the holding of the D.C. Court of Appeals in National Parks and Conservation Association v. Morton.

APPENDIX B - OPTIONS FOR REVIEW PROCEDURES
UNDER THE FREEDOM OF INFORMATION ACT.

I. Background. This memorandum presents options for review procedures in the event a request for information is denied under the pending D.C. Freedom of Information Act. The discussion assumes that a written request for information has been submitted, and a letter of denial has been issued by the agency involved. The first step in the process, the denial of a request for information, and the final step, judicial review of the denial are the same for each of the options to be discussed below. This memorandum outlines options for what, if anything, should happen between these steps.

II. Outline

- A. No intermediate appeal - Immediate judicial review.
- B. Appeal to head of agency involved (Federal model).
- C. Appeal to Corporation Counsel (Dixon bill).
- D. Appeal to independent commission (New York model).

III. Analysis of options

A. Immediate Judicial Review. This option would eliminate any kind of intermediate appeal of a denial and permit the requestor to seek immediate judicial relief by filing suit against the government agency. A number of states have followed this procedure including Maryland, California, Massachusetts, and Louisiana.

-B1-

1. Advantages. a. Shorter Time Frame. The chief advantage of a provision for immediate judicial review is that it would shorten the time in which ultimate disposition of a request would be determined. Mr. James Heller of the American Civil Liberties Union noted this point in his testimony at public hearings on the bill. "[I]t [an intermediate appeal] will simply become one more administrative obstacle and delaying point before securing judicial review of a refusal to disclose information." Comments, of the American Civil Liberties Union, Mr. James Heller, on Council Bill No. 1-119, at 6.

b. Informal Review. The informal role of Corporation Counsel was stressed by Heller as well. If there is no intermediate appeal, it is most likely that the agency will seek the input of Corporation Counsel either directly or through following of Corporation Counsel guidelines. This amounts to an informal, behind the scenes appeal to Corporation Counsel, a more expeditious route than a formal appeal process to the City's lawyer.

A similar "informal" review operates at the federal level, where a five man "Freedom of Information Committee" in the Department of Justice is consulted by federal agencies prior to the issuance of a final denial of a request for information if there is any possibility that the denial might result in litigation. H. Rep. No. 92-1419, 92d Cong., 2d Session, at 73 (1972).

c. Incentive for Serious Consideration. This option

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would serve as an incentive for government agencies to treat every request for information seriously and expeditiously. Instead of waiting for an appeal to make the final determination of a request agencies would be forced to make that determination at the outset.

2. Disadvantages. A disadvantage sometimes cited is that a provision for immediate judicial review might result in unnecessary litigation. However, even if an agency was clearly wrong in denying a request, that does not mean that litigation is inevitable. "[I]f the Corporation Counsel believed that the records should be disclosed, he would probably so advise the agency if and when it was sued by the citizen." Comments of the American Civil Liberties Union, Mr. James Heller, on Council Bill No. 1-119.

Another disadvantage of immediate judicial review is that a citizen might be discouraged from appealing a denial if his only resource was litigation. The time and expense involved might be a deterrent, even though the bill would allow the awarding of attorney's fees in the discretion of the court.

B. Appeal to head of agency involved. This option would follow the federal model of permitting an appeal of a denial to the head of the agency involved, prior to any judicial review of that denial. This appeal would be in the form of a written request for review of the denial, without a formal hearing.

1. Advantages. Intra-agency appeal provides an inter-

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mediate step for both the requestor and the agency to attempt to resolve their differences, without the time and expense of litigation. It provides the agency with a mechanism for maintaining a uniform policy. Finally, it provides the agency with an opportunity to catch blatant mistakes in judgement, then preventing a needless suit based on the denial.

2. Disadvantages. Establishment of an intra-agency appeal erects one more administrative hurdle to judicial review of a denial. It enlarges the time frame from initial request to ultimate release of information, where release is finally mandated by the act.

An intra-agency appeal could cost the agency more money, since it would have to set up a appeal process to handle intermediate appeals. It might be more efficient to require the agency to make one careful, reasoned determination to either release or deny information.

If the decision to withhold information was made on fundamental policy grounds it is most likely that the head of the agency would uphold the decision. In that case the intermediate appeal would likely present the "obstacle" that Mr. Heller refers to.

C. Appeal to Corporation Counsel. This option is included in the Dixon bill as introduced to the Council. It follows the model of the State Model Freedom of Information Act prepared by the Freedom of Information Clearinghouse.

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1. Advantages. An intermediate appeal to the Corporation Counsel serves as a check on the legality of the agency's action prior to going to court. As attorney for the District government, the Corporation Counsel has a strong interest in preventing unnecessary litigation. In addition, it would provide a somewhat independent review in that the Corporation Counsel is arguably one step removed from the agency that made the initial determination.

Since the Corporation Counsel would serve as a central clearinghouse for appeals it is likely that at least one full-time attorney would be assigned this function. This attorney would probably develop greater expertise in the area than agency personnel who would devote only part-time efforts to the function.

2. Disadvantages. Corporation Council may be placed in a conflict of interest situation in that he may be called upon to advise an agency in making its initial determination, and then be asked to review that decision when it is appealed.

D. Appeal to an Independent Commission. This option was suggested by the D.C. Public Interest Research Group in their testimony on the Dixon bill. It follows the model of the recently enacted New York Freedom of Information Law. New York Public Officers Law, §85-§80. See options memorandum. It would establish an independent commission composed of representatives of the government, the media, and the public. The New York Commission has three members who are representatives of

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government agencies and four representatives from the general public, at least two of whom are or have been news media representatives. New York Public Officers Law, §88(a).

In New York the commission assists the agencies in implementing the law by issuing rules, guidelines, opinions and regulations. It also assists the legislature by recommending possible changes or clarifications in the law.

1. Advantages. An intermediate appeal to an independent commission has the same advantage of avoiding unnecessary litigation as the appeal to the head of the agency (option B, supra) or the appeal to the Corporation Counsel (option C supra). In addition, there is a higher probability of an objective review being made, since the commission would be operating independently of the executive branch.

The Commission would provide more citizen input, through representatives of the general public and the media, into the oversight of the operation of the freedom of information law. The commission could be empowered to hold a full evidentiary hearing on appeals of denials, thus establishing a record for court review. In addition, by making judicial review of the commission's decision appellate review, rather than de novo review, there would be a lesser tendency to appeal the commission's decision, thus saving the workload on the courts.

A commission with powers to conduct a full evidentiary hearing raises questions regarding burdens of proof, and who

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would be qualified to sit as commissioners for this type of adversary proceeding. If the Judiciary Committee desires to pursue this option further, more detailed analysis should be undertaken.

2. Disadvantages. There seems to be an inherent problem of inefficiency where appeal decisions are made by a group. The District of Columbia's present Freedom of Information authority, Commissioner's Order No. 71-370, established an independent body, the Public Information Review Board, "to administer and supervise this order and to review delays and denials of information by the agencies involved." Title I D.C. Code §1504. Yet at the Public Hearings on the Dixon bill, Mr. Martin Schaller, Executive Secretary for the District of Columbia, noted that the board had not met for the past year. This experience suggests that a group such as a board or commissions might not be effective unless it is established independent of any branch which it reviews.

Setting up and operating such a commission would probably prove to be the most costly of all the options for appeals procedures mentioned above. Unless the Commission was given full evidentiary hearing powers it is unlikely that it could guarantee a significant decrease in potential litigation. Without such a decrease, the cost of operating the commission would probably not be justified.

APPENDIX C

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OFFICE OF THE SECRETARY
DISTRICT OF COLUMBIA COUNCIL

A BILL

NO. 1-119Arrington Dixon
Councilmember for Arrington Dixon

In the Council of the District of Columbia

JUNE 10, 1975

Councilmember Arrington Dixon introduced the following Bill which was referred to the Committee on Judiciary and Criminal Law.

A Bill to create a Freedom of Information Act; to create rights and penalties; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

1 That this Act may be cited as the "Freedom of Information Act of 1975."

2 Sec. 2. Public Policy. It is hereby declared to be the public
3 policy of the District of Columbia that all persons are entitled to full
4 and complete information regarding the affairs of government and the
5 official acts of those who represent them as public officials and
6 employees. To that end, the provisions of this Act shall be
7 construed in every instance with the view toward complete public access.

8 Sec. 3(A). Section 1-1502 of the District of Columbia Code is hereby
9 amended by inserting the following after the final ";" in Section 13:
10 "(14) the term 'public record' includes all books, papers, maps, photo-
11 graphs, cards, tapes, recordings, or other documentary materials regard-
12 less of physical form or characteristics prepared, owned, used, in the
13 possession of, or retained by the Mayor and agencies."

14 (B) Section 1-1502 of the District of Columbia Code is hereby
15 amended by striking "(14)", "(15)", and "(16)", and inserting "(15)",

1 "(16)", and "(17)", in lieu thereof respectively.

2 Sec. 4. Access to Public Records from the Mayor and Agencies.

3 (A) Any person has a right to inspect or copy any public record
4 of the Mayor or an agency, except otherwise expressly provided by
5 Section 5 (exemptions) of this Act in accordance with reasonable
6 rules concerning time and place of access.

7 (B) The Mayor or an agency may establish and collect fees not to
8 exceed the actual cost of searching for or making copies of records.
9 Documents may be furnished without charge or at a reduced charge where
10 the Mayor or agency determines that waiver or reduction of the fee is in
11 the public interest because furnishing the information can be considered
12 as primarily benefiting the general public. But fees shall not be
13 charged for examination and review to determine if such documents are
14 subject to disclosure.

15 (C) The Mayor or an agency, upon request for records made under
16 this Act, shall within fifteen days (excepting Saturdays, Sundays,
17 and legal public holidays) of the receipt of any such request notify
18 the person making such request of its determination and the reasons
19 therefor. Such a determination shall constitute the final opinion of
20 the Mayor or an agency as to the public availability of the requested
21 public record.

22 Sec. 5. Exemptions.

23 (A) The following matters may be exempt from disclosure under the
24 provisions of this Act:

25 (1) Trade secrets, which are defined as unpatented, secret,
26 commercially valuable plans, appliances, formulas, or processes, which
27 are used for the making, preparing, compounding, treating, or processing

1 of articles or materials which are trade commodities obtained from
2 a person and which are generally recognized as confidential.

3 (2) Information of a personal nature where the public
4 disclosure thereof would constitute a clearly unwarranted invasion
5 of personal privacy.

6 (3) Records of law enforcement agencies not otherwise
7 available by law that were compiled in the process of detecting and
8 investigating crime if the disclosure of the information would harm
9 the agency by:

- 10 a. disclosing identity of informants not otherwise known;
- 11 b. the premature release of information to be used in a
12 prospective law enforcement action;
- 13 c. disclosing investigatory techniques not otherwise known
14 outside the government;
- 15 d. deprive a person of a right to a fair trial or an impar-
16 tial adjudication;
- 17 e. constitute an unwarranted invasion of personal privacy;
- 18 f. endanger the life or safety of a law enforcement officer.

19 Sec. 6. Information Which Must be Public. Without limiting the
20 meaning of other sections of this Act, the following categories of infor-
21 mation are specifically made public information:

22 (1) the names, sex, ethnicity, salaries, title, and dates of
23 employment of all employees and officers of the Mayor and an agency;

24 (2) administrative staff manuals and instructions to staff that
25 affect a member of the public;

26 (3) final opinions, including concurring and dissenting opinions,
27 as well as orders, made in the adjudication of cases;

1 (4) those statements of policy and interpretations of policy,
2 Acts, and rules which have been adopted by the Mayor or an agency;

3 (5) planning policies and goals, and interim and final
4 planning decisions;

5 (6) correspondence and materials referred to therein, by and
6 with the Mayor or an agency relating to any regulatory, supervisory,
7 or enforcement responsibilities of the agency, whereby the agency
8 determines, or opines upon, or is asked to determine or opine upon,
9 the rights of the District, the public, of any private party;

10 (7) information in or taken from any account, voucher, or
11 contract dealing with the receipt or expenditure of public or other
12 funds by public bodies;

13 (8) the minutes of all proceedings of all agencies and all
14 votes at such proceedings.

15 Sec. 7. Enforcement.

16 (A) Any person denied the right to inspect a public record of the
17 Mayor or an agency may petition the Corporation Counsel to review the
18 public record to determine if it may be withheld from public inspec-
19 tion, the person seeking disclosure may institute proceedings for
20 injunctive or declaratory relief in the trial court. If the
21 Corporation Counsel declares the document to be a public record and
22 the government body continues to withhold the record, the Corpora-
23 tion Counsel shall bring suit in the name of the District of
24 Columbia in the trial court to enjoin the agency from withholding the
25 records and to compel the production of documents for the person
26 seeking disclosure.

(B) In any suit filed under section 7(A) of this Act, the court has jurisdiction to enjoin the Mayor or an agency from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the Mayor or an agency to sustain its action. The court may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(C) Except as to causes the court considers of greater importance, proceedings arising under Section 7(A) of this Act take precedence on the docket over all other causes and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

(D) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he or she shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him or her reasonable attorney fees or an appropriate portion thereof.

Sec. 8. Penalties. Any official who violates the provisions of this Act shall be subject to \$1,000 fine for each offense.

Sec. 9(a) This Act shall be codified in Chapter 15 of Title 1 of the District of Columbia Code, as Section 1-1511.

(b) Commissioner's Order No. 71-370, issued November 2, 1971, is hereby repealed.

Sec. 10. This Act shall take effect pursuant to the provisions of Sec. 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

APPENDIX D

Council Bill No. 1-119 with Proposed D.C. Bar Amendments

A Bill to create a Freedom of Information Act;
to create rights and penalties; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this Act may be cited as the "Freedom of Information Act of 1976".

Sec. 2. Public Policy. It is hereby declared to be the public policy of the District of Columbia that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, the provisions of this Act shall be construed in every instance with the view toward complete public access, and the minimization of costs and time delays to persons requesting information.

Sec. 3(A). Section 1-1502 of the District of Columbia Code is hereby amended by inserting the following after the final ";" in Section 13:

(14) the term "public body" includes: (A) every officer, agency, department, division, bureau, board, or body in the executive branch of the Government of the District of Columbia; (B) every officer, board, commission, council, or committee in the legislative branch of the Government of the District of Columbia; and (C) every officer, judge, court, board, department, commission, council or agency in the judicial branch of the Government of the District of Columbia;

(15) the term "public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body;

(16) "adjudication" means agency process for the formulation of an order.

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1 (B) Section 1-1502 of the District of Columbia Code is hereby
2 amended by striking "(14)", "(15)", and "(16)", and inserting "(17)",
3 "(18)", and "(19)", in lieu thereof respectively.

4 Sec. 4. Right of Access to Public Records; Allowable Costs;
5 Time Limits.

6 (A) Any person has a right to inspect and, at his or her
7 discretion, to copy any public record of a public body, except as
8 otherwise expressly provided by Section 8 (exceptions) of this
9 Act, in accordance with reasonable rules that may be issued after
10 notice and comment by a public body concerning time and place of access.

11 (B) The public body, upon request for public records made under
12 this Act, shall within fifteen days (excepting Saturdays, Sundays,
13 and legal holidays) of the receipt of any such request notify
14 the person making such request of its determination and the reasons
15 therefor. Such a determination shall constitute the final opinion
16 of the public body as to the public availability of the requested
17 public record. Any failure on the part of a public body to comply
18 with a request under subsection (A) within the time provisions of
19 this subsection shall be deemed a denial of the request.

20 (C) The public body may establish and collect fees not to
21 exceed the actual, direct cost of searching for or making copies of
22 public records. But fees shall not be charged for examination and
23 review to determine if such public records, or portions of public
24 records, are subject to disclosure. Public records shall be

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1 ...ished without charge or at a reduced charge when furnishing
2 the information can be considered as primarily benefiting the
3 general public.

4 Sec. 5. Administrative Appeals and Enforcement.

5 (A) Any person denied the right to inspect a public record
6 of a public body may petition the Corporation Counsel to review the
7 public record to determine whether it may be withheld from public
8 inspection. This determination shall be made within 20 days
9 (excluding Saturdays, Sundays, and legal holidays) of the submission
10 of the petition.

11 (1) If the Corporation Counsel denies the petition, the
12 person seeking disclosure may institute proceedings for injunctive
13 or declaratory relief in the Superior Court for the District of
14 Columbia.

15 (2) If the Corporation Counsel decides that the public
16 record may not be withheld, he shall order the public body to disclose
17 the record immediately. If the public body continues to withhold the
18 record, the person seeking disclosure may bring suit in the Superior
19 Court for the District of Columbia to enjoin the public body from
20 withholding the record and to compel the production of the requested
21 record. Alternatively, said person may demand that the Corporation
22 Counsel bring suit in the name of the District of Columbia in the
23 Superior Court for the District of Columbia for the same purposes.

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1 The Corporation Counsel shall bring suit within 10 days (excluding
2 Saturdays, Sundays, and legal holidays) of the request. The requester
3 shall have an absolute right to intervene as a full party in said
4 suit at any time.

5 (B) In any suit filed under section 5(A) of this Act, the
6 Superior Court for the District of Columbia has jurisdiction to
7 enjoin the public body from withholding records and to order the
8 production of any records improperly withheld from the person
9 seeking disclosure. The court shall determine the matter de novo
10 and the burden is on the public body to sustain its action. The
11 court may view the records in controversy in camera before reaching
12 a decision, and other persons, including the requester, counsel and
13 necessary expert witnesses may be permitted to view the records,
14 subject to necessary protective orders. Upon motion and consent
15 of all parties, if the court makes a written finding that extraordinary
16 circumstances require the proceedings, or portions thereof, to be
17 closed to the general public and that such closed proceedings are in
18 the public interest, the court may order that proceedings be held in
19 the presence of all parties and counsel at which the general public
20 is excluded. Any noncompliance with the order of the court may be
21 punished as contempt of court.

22 (C) Except as to cases the court considers of greater
23 importance, proceedings arising under section 5(A) of this Act, including

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1 appeals, take precedence on the docket over all other cases and shall
2 be assigned for hearing, trial or argument at the earliest practicable
3 date and expedited in every way.

4 (D) If a person seeking the right to inspect or to receive a
5 copy of a public record prevails in such suit, he or she shall be
6 awarded reasonable attorney fees and other costs of litigation.
7 If such person prevails in part, the court may in its discretion
8 award him or her reasonable attorney fees or an appropriate portion
9 thereof.

10 Sec. 6. Recording of Final Votes. Each public body having
11 more than one member shall maintain and make available for public
12 inspection a record of the final votes of each member in each
13 proceeding of that public body.

14 Sec. 7. Information Which Must Be Public. Without limiting
15 the meaning of other sections of this Act, the following categories
16 of information are specifically declared to be public information,
17 except in extraordinary circumstances where an exception from dis-
18 closure applies and the policy reasons for that exception clearly
19 outweigh the public interest in disclosure in the particular case:

20 (1) the names, sex, ethnicity, salaries, title, and dates of
21 employment of all employees and officers of a public body;

22 (2) administrative staff manuals and instructions to staff
23 that affect a member of the public;

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1 (3) final opinions, including concurring and dissenting
2 opinions, as well as orders, made in the adjudication of cases;

3 (4) those statements of policy and interpretations of policy,
4 Acts, and rules which have been adopted by a public body;

5 (5) correspondence and materials referred to therein, by
6 and with a public body relating to any regulatory, supervisory,
7 or enforcement responsibilities of the public body, whereby the
8 public body determines, or states an opinion upon, or is asked
9 to determine or state an opinion upon, the rights of the District,
10 the public, or any private party;

11 (6) information in or taken from any account, voucher, or
12 contract dealing with the receipt or expenditure of public or
13 other funds by public bodies;

14 (7) the minutes of all proceedings of all public bodies and
15 all votes of each member of each public body at such proceedings;

16 (8) facts, analysis or evaluation of facts, or summaries
17 of facts.

18 Sec. 8. Exceptions from Mandatory Disclosure.

19 (A) The following matters may be withheld from disclosure
20 under the provisions of this Act, but these exceptions from
21 mandatory disclosure only permit, and never require, withholding
22 by a public body:

- 7 -

1 (1) Confidential commercial or financial information to
2 the extent that disclosure would:

3 (a) result in substantial and unfair
4 competitive injury to the submitter of that information to a public
5 body, if the submitter has specifically requested that the information
6 not be made public, or, if submitted prior to the effective date of
7 this Act, such a request is reasonably to be implied from the
8 circumstances of the submission; or

9 (b) lead to serious, undue, financial speculations
10 in currencies, securities, or commodities.

11 (2) Information of a personal nature where the public
12 disclosure thereof would constitute a clearly unwarranted invasion
13 of personal privacy.

14 (3) Public records of law enforcement agencies that were
15 compiled as part of an investigation for law enforcement purposes,
16 if the disclosure of the information would harm the agency by:

17 (a) disclosing the identity of informants not generally
18 known outside the government;

19 (b) the premature release of information to be used
20 in a prospective law enforcement action;

21 (c) disclosing investigatory techniques not generally
22 known outside the government;

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(d) depriving a person of a right to a fair trial or an impartial adjudication;

(e) endangering the life or safety of a law enforcement officer.

(4) Inter-public body and intra-public body communications, but only to the extent that they do not fall within Section 6, involving:

(a) deliberations among judges concerning prospective judicial decisions;

(b) information routinely protected by the attorney work-product or attorney-client privileges; and

(c) recommendations made by advisers on policy-making, adjudicatory, rule-making, or judicial decisions, Provided that this subsection shall not protect from disclosure inter-public body communications between any two or three branches of the District of Columbia Government as defined in subsections (A), (B), and (C) of Section 3 of this Act.

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

(B) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (A).

(C) No public record shall be withheld for any reason other than those that are specifically enumerated in subsection (A).

Sec. 9. Penalties. Upon motion, notice and hearing, any public official or employee who withholds records or denies a request for records without a reasonable basis in law shall be subject to a \$1000

1 fine for each offense.

2 Sec. 10. Letters of Denial.

3 (A) Denial by a public body of a request for public records
4 from that public body shall contain at least the following:

5 (1) the specific reasons for the denial, including
6 citations to the particular exception(s) under section 8 of this
7 Act relied on as authority for the denial;

8 (2) the name(s) of the public official(s) or employee(s)
9 responsible for the decision to deny the request; and

10 (3) notification to the requester of any administrative
11 or judicial right to appeal under section 5(A) of this Act.

12 (B) Each public body of the District of Columbia shall maintain
13 a file of all letters of denial of requests for public records from
14 that public body. This file shall be made available to any person
15 on request.

16 Sec. 11(A). Codification and Repealer. This Act shall be
17 codified in Chapter 15 of Title 1 of the District of Columbia Code,
18 as Section 1-1511.

19 (B) Commissioner's Order No. 71-370, issued November 2, 1971, is
20 hereby repealed. All laws of the District of Columbia that are inconsis-
21 tent with this Act are to the extent of the inconsistency hereby repealed

22 Sec. 12. Effective Date. This Act shall take effect pursuant
23 to the provisions of Sec. 602(c) of the District of Columbia Self-
24 Government and Governmental Reorganization Act.

Attachment—Freedom of Information Act as Amended in 1974
by Public Law 93-502
(Amendments are underscored)

§552. Public information; agency rules, opinions, orders, records, and proceedings.

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of

cases:

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1957, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges

for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority

of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request--

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;
or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsection (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

ATTACHMENT D -- Summary of Principal Changes in Freedom of
Information Act made by 1974 Amendments

| <u>Changes</u> | <u>Place in Amended Act</u> |
|---|-------------------------------|
| 1. Publication or alternative requirement concerning <u>indexes</u> of (a)(2) materials | 552(a)(2) |
| 2. Administrative <u>time limits</u> and extensions, and contents of denial letters | 552(a)(6) |
| 3. Uniform agency <u>fees</u> for search and duplication | 552(a)(4)(A) |
| 4. <u>Disciplinary</u> proceedings for arbitrary or capricious denials | 552(a)(4)(F) |
| 5. <u>In camera</u> inspection by court of requested documents | 552(a)(4)(B) |
| 6. Shortened <u>time to answer</u> complaint in court | 552(a)(4)(C) |
| 7. <u>Attorney fees</u> award for requesters who prevail | 552(a)(4)(E) |
| 8. Revision of exemption 1 for <u>defense and foreign policy</u> records classified under Executive Order | 552(b)(1) |
| 9. Revision of exemption 7 for <u>investigatory law enforcement</u> records | 552(b)(7) |
| 10. Availability of "reasonably segregable portion" of record | 552(b) (at end of subsection) |
| 11. Annual reports to Congress | 552(d) |

(In addition, the 1974 Amendments make a number of other changes in the Act which, for the purposes of most agencies, are believed to be generally less significant.)

APPENDIX F

Commissioner's Order No. 71-370

November 2, 1971

SUBJECT: Availability of Official Information for Public Disclosure

ORIGINATING AGENCY: Executive Secretary, D.C.

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

Commissioner's Order No. 299.207/1 of December 27, 1935, as amended by Order of the Commissioner No. 68-211 of March 19, 1968, is hereby repealed and the following policies shall govern the availability for disclosure by agencies of the Government of the District of Columbia of official information and records requested by the general public.

Sec. 1. Definitions. For the purposes of this Order, the following definitions shall apply:

- (a) "Agency" means an office, department, division, board, commission, or other entity of the Government of the District of Columbia under the administrative authority of the Commissioner of the District of Columbia.
- (b) "Available" means keeping the record or a duplicate thereof open for inspection and copying during the normal business hours of the agency.
- (c) "Categorical request" means any request for all records falling within a reasonably specific category which conforms to the definition of "identified records."
- (d) "Identified records" mean any reasonably specific description of the records sought which will enable an agency employee to locate the requested records and would include the general subject matter of the records, and the title and dates of the records, if known.

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- (e) "Person" means any member of the general public, besides persons legally authorized by other than this Order, whether an individual, partnership, association, corporation, or public or private organization.
- (f) "Public disclosure" means available to any member of the general public besides persons legally authorized by other than this Order.
- (g) "Records" means any books, papers, maps, photographs or other documentary material, regardless of physical form or characteristics, made or received by an agency of the Government of the District of Columbia in connection with the transaction of public business, and preserved, or appropriate for preservation by that agency or its successor as evidence of its organization, functions, decisions, policies, procedures, operations, or other activities of the District Government or because of the informational value of data contained therein. However, the term shall not include the compiling or processing of a record not in existence, or not in the possession or control of the agency, nor shall it include objects or articles such as tangible exhibits, models, and other structures or equipment.

Sec. 2(a) General Availability of Government Records. Upon written request by any person for identified records, the agency of the District Government to which the request is directed shall, not later than within ten working days, make such records available. Should the agency require additional time to produce the records, it shall acknowledge the request in writing within such ten-day period, stating therein the reason for the delay and indicating the date on which the records shall be available. Grounds for delay beyond the ten-day period are: the requested records are stored in whole or part at locations other than the office having charge of the records; the request requires the collection of a substantial number of specified records; the requested records have not been located in the course of a routine search and additional efforts are required to locate them; the

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requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure by section (3)(a) of this Order, or can be revealed only with appropriate deletions as provided for under section (3)(a).

- (b) If the records requested are unavailable for disclosure under one of the categories of Section (3)(a), the agency may deny the request, but in such case it shall provide a written denial to the person requesting the records within ten working days, stating the reason for the denial and shall inform such person of the review procedures provided by section 5 of this Order. The knowledge and responsibility of the head of the agency denying the request shall be implied in every written denial. Each agency of the District Government shall maintain a file of all letters of denial of that agency which shall be made available on request.
- (c) Each agency shall establish reasonable procedures to carry out this Order, including designation of the place or places at which requests may be made and publication of the fee structure for duplicating records and for processing categorical requests. A request form may be provided but its use may not be required. Any written request which conforms to the definition of "identified records" in section (1)(d) shall be sufficient under this Order.

Sec. 3. Records which may be withheld from Public Disclosure.

- (a) The following records may be withheld from public disclosure:
 - (1) records specifically exempted from disclosure by law;
 - (2) records in files whose release would result in a clearly unwarranted invasion of personal privacy, except when identifying references, such as names and addresses, are deleted;

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- (3) records in investigatory and inspection files compiled for law enforcement purposes, except to the extent available by law to a party other than an agency;
 - (4) records of commercial or financial information obtained from a person under an agreement of confidentiality; and
 - (5) records of inter-agency or intra-agency communications which would not be available by law to a party other than an agency in litigation with the agency, except that all outside consultant reports shall be made available within a reasonable period of time, not to exceed one year, from their issuance, and, further, that all guidelines, instructions or procedures issued to governmental personnel for the administration of any public law, regulation or Order shall not be considered inter-agency or intra-agency communications under this Order.
- (b) Any of the records listed in subsection (a), except for records listed in paragraph (1), may be made available by the agency or reviewing body if said agency or reviewing body determines that no unreasonable interference with personal privacy or effective governmental operations shall result. Nothing in this Order shall authorize the withholding of information or limit the availability of records to members of Congress to any legally authorized governmental agency or person.

Sec.4 Public Information Review Board.

- (a) A Public Information Review Board is hereby established to administer and supervise this Order and to review delays and denials of information by the agencies involved. The Review Board shall be comprised of the following members: (1) the Public Affairs Officer of the District of Columbia or his representative, (2) the Corporation Counsel of the District of Columbia

or his representative, (3) the Director of the Office of Planning and Management or his representative, and (4) two representatives appointed by the Commissioner of the District of Columbia who shall represent the public. The public representatives may not be employees of the District of Columbia Government and shall serve a three-year term of office. The Executive Secretary of the District of Columbia shall be a non-voting member of the Review Board, except that he may cast a vote to break a tie, and he shall chair the meetings of the Board.

- (b) The Executive Secretary of the District of Columbia shall furnish staff assistance to the Review Board, and shall convene and preside over its meetings and maintain records of its proceedings. Three members of the Review Board shall constitute a quorum. Three days' notice shall be given to each Board member before each and every meeting of the Board.
- (c) The Review Board shall have the following powers and responsibilities:
 - (1) to review all appeals from denials of access to agency records; and
 - (2) to review all complaints about violations of time limits set out in section 2 of this Order. If the Review Board finds the complaint justified, it shall order the agency to supply the records or to issue an official denial immediately. A report of the failure or refusal of an agency to comply with an order of the Review Board shall be forwarded to the Commissioner for appropriate action.

Sec. 5 Review of Denials of Public Access to Government Records.

Any person denied access to Government records by an agency may appeal to the Review Board established by Section 4 of this Order by filing, within thirty days of such denial, a request for review, in writing, with the Executive Secretary. The Board shall be convened within twenty working days from the time a written appeal is received by the Executive Secretary. The Board is authorized to review the facts and rationale behind the agency action, including review of the records in question, and shall

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determine whether the agency decision represents a proper interpretation and application of this Order. If the Board, after its review, determines that the agency in question improperly interpreted or applied provisions of this Order, the Board shall so notify the Commissioner of the District of Columbia who may issue a directive to the agency ordering it to make available the records in question. The decision of the Review Board shall be sent in writing to the person making the appeal within ten days after the Board convenes to consider the appeal. A copy of all decisions of the Review Board shall be kept on file by the Executive Secretary and shall be available to any person on request.

Sec. 6 Effective Date. The provisions of this Order shall take effect 30 days after the date of this Order.

WALTER E. WASHINGTON
Commissioner of the District of Columbia

THE WASHINGTON STAR,
Washington, D.C., October 4, 1976.

Mr. GREGORY E. MIZE,
Council of the District of Columbia,
Washington, D.C.

DEAR GREG, Enclosed you will find:

1. File of correspondence dating back to July 7, 1976, in which we sought access to certain records of the University of the District of Columbia. The Public Information Review Board says it has no jurisdiction over the university, and the president of Washington Technical Institute has given no reply since July 21, when he acknowledged receipt of our request.

2. Opinion of the Attorney General of Virginia, expressing the view that a college board of visitors falls under the state's Freedom of Information Act. (1973.) [omitted].

3. Opinion of the Attorney General of Maryland concluding that a county board of education falls under the state's Freedom of Information Act. [omitted].

Do you think the D.C. bill as now drafted will cover public schools and universities?

Your sincerely,

ROBERT PEAR.

THE WASHINGTON STAR,
Washington, D.C., July 7, 1976.

Dr. CLEVELAND DENNARD,
Washington Technical Institute,
Washington, D.C.

DEAR DR. DENNARD: Under Commissioner's Order No. 76-109, "Availability of Official Information for Public Disclosure," and under 5 U.S.C. 552 et seq., The Freedom of Information Act, we hereby request personal access to the following materials:

A copy of the personnel action dated May 16, 1975, intended to discontinue payment of the president's housing allowance as part of his salary.

A copy of the lease on the apartment occupied by the President of WTI, executed by the Secretary of the Board of Vocational Education on May 1, 1975. Also, any documents indicating whether this lease was ever canceled before it expired in April-May 1976.

Copies of any and all bank statements for the WTI Agency and Restricted Fund Account issued by American Security & Trust Co. since May 25, 1976.

Records of receipts and disbursements from the WTI Agency and Restricted Fund Account since June 1, 1976, including any records showing the purchase of certificates of deposits (dates and amounts).

Copies of any certificates of deposit purchased with funds of the WTI Agency and Restricted Fund Account since June 1, 1976.

Yours sincerely,

DIANE BROCKETT.
ROBERT PEAR.

THE WASHINGTON STAR,
Washington, D.C., July 8, 1976.

DR. CLEVELAND DENNARD,
Washington Technical Institute,
Washington, D.C.

DEAR DR. DENNARD: Under Commissioner's Order No. 76-109, "Availability of Official Information for Public Disclosure," and under 5 U.S.C. 552 et seq., the Freedom of Information Act, we hereby request personal access to the following materials:

A copy of the Faculty Manual of Washington Technical Institute.

A copy of any manual or official guide to personnel procedures at WTI.

Also, we request answers to the following questions:

Is Gladys Yeldell related to Joseph P. Yeldell? If so, what is the relation? What is her position at WTI? What is her salary? What are her qualifications for the job?

Is Thomas Yeldell related to Joseph P. Yeldell? If so, what is the relation? What is Thomas Yeldell's position at WTI? What is his salary? What are his qualifications for the job?

Is Irene Adams an employe of Washington Technical Institute? What is her position? What is her salary? What are her qualifications for the job? Does she have a college degree from Tennessee A&I State University? Does she have a degree from Illinois State Teachers College?

Also under Commissioner's Order No. 76-109, we request any documents containing the position classification and job description for Norma Barnes.

Thank you.

Yours sincerely,

DIANE BROCKETT.
ROBERT PEAR.

THE WASHINGTON STAR,
Washington, D.C., July 9, 1976.

DR. CLEVELAND L. DENNARD,
Washington Technical Institute,
Washington, D.C.

DEAR DR. DENNARD: Under Commissioner's Order No. 76-109, "Availability of Official Information for Public Disclosure," and under 5 U.S.C. 552 et seq., the Freedom of Information Act, we hereby request personal access to the following materials:

Records of Washington Technical Institute's investment portfolio showing

Names of all stocks and securities in the portfolio

And the amount invested in each stock

And detailed records of all endowment income earned from stocks in the investment portfolio

Together with records showing the disposition of said income.

Thank you.

Yours sincerely,

DIANE BROCKETT.
ROBERT PEAR.

JULY 21, 1976.

Ms. DIANE BROCKETT,
Mr. ROBERT PEAR,
The Washington Star,
Washington, D.C.

DEAR MS. BROCKETT AND MR. PEAR: Thanks for your recent written inquiries relative to information concerning the Washington Technical Institute's programs, personnel and resources. I have formally submitted the several requests to the Board of Trustees of the University who have taken the requests under advisement.

As quickly as a policy determination has been made, either the Board or I shall get back in touch with you incident to your requests.

Sincerely,

CLEVELAND L. DENNARD,
President.

THE WASHINGTON STAR,
Washington, D.C., July 22, 1976.

Mr. BEN GILBERT

DEAR MR. GILBERT: Having sought the following materials without success in written requests to Washington Technical Institute, we hereby request a hearing of the Public Information Review Board, under Mayor's Order No. 76-109.

We wish to complain about the denial of access to certain WTI records and the violation of time limits set out in Section 2 of the Mayor's Order.

We ask the Public Information Review Board to grant us access to the following records:

A copy of the personnel action dated May 16, 1975, intended to discontinue payment of the WTI president's housing allowance as part of his salary.

A copy of the lease on the apartment occupied by the president of WTI, executed by the Secretary of the Board of Vocational Education on May 1, 1975. Also, any documents indicating whether this lease was ever canceled before it expired in April-May 1976.

Copies of any and all bank statements for the WTI Agency and Restricted Fund Account since June 1, 1976, including any records showing the purchase of certificates of deposit (date and amount).

Copies of any certificates of deposit purchased with funds of the WTI Agency and Restricted Fund Account since June 1, 1976.

A copy of the Faculty Manual of Washington Technical Institute.

A copy of any manual or official guide to personnel procedures at WTI.

Any documents containing the position classification for Norma Barnes, executive assistant to the WTI president.

Records of a Washington Technical Institute's investment portfolio showing: names of all stocks and securities in the portfolio; the amount invested in each stock; detailed records of all endowment income earned from stocks in the investment portfolio, and records showing the disposition of said income.

Thank you.

Yours sincerely,

ROBERT PEAR,
Staff Reporter.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,

OFFICE OF THE SECRETARY,

Washington, D.C., September 7, 1976.

Re Request for Documents from the Washington Technical Institute
(Public Information Review Board).

MR. ROBERT PEAR,
Staff Reporter,
Washington Star-News,
Washington D.C.

DEAR MR. PEAR: In response to your letter of July 22, 1976 and subsequent telephone conversations to the Public Information Review Board requesting access to certain Washington Technical Institute records, the Board met on August 5, 1976 and reviewed your request.

Accordingly, and in view of a decision by the Corporation Counsel, the Mayor cannot exercise administrative control over the Washington Technical Institute, and the Public Information Review Board has no jurisdiction with regard to your request.

However, the Board is very sympathetic to your request and we have advised Dr. Cleveland Dennard of our position, and we are hopeful that this matter can be reconciled to your satisfaction.

Sincerely yours,

MARTIN K. SCHALLER,
Executive Secretary,
District of Columbia.

Enclosure.

EXECUTIVE OFFICE,
SECRETARIAT,
September 8, 1976.

MEMORANDUM, GOVERNMENT OF THE DISTRICT OF COLUMBIA

To: Dr. Cleveland L. Dennard, President, Washington Technical Institute.

From: Martin K. Schaller, Executive Secretary, D.C.

Subject: Request Before Public Information Review Board.

Mr. Robert Pear, Staff Reporter for the Washington Star-News, has requested that the Public Information Review Board consider the denial by Washington Technical Institute for access to certain records of the Institute.

It is the Board's view, with concurrence of the Corporation Counsel, that the Public Information Review Board has no jurisdiction with regard to Mr. Pear's request. The Board has advised Mr. Pear of its decision and is hopeful that this matter can be reconciled.

Although the Washington Technical Institute is not covered under the provisions of the Mayor's Order 76-109 (Availability of Official Information for Disclosure), the Board is hopeful that you can comply with the spirit and intent of the Mayor's Order, so that this matter can be reconciled.

THE WASHINGTON STAR,
Washington, D.C., September 13, 1976.

Mr. MARTIN K. SCHALLER,
District Building,
Washington, D.C.

DEAR MR. SCHALLER: Thank you for your letter of September 7, 1976, replying to our July 22 request for a hearing of the Public Information Review Board.

You state that "the Board met on August 5, 1976" and reviewed our request.

We were given no advance notice of the meeting, nor were we allowed to appear.

Accordingly, pursuant to Mayor's Order 76-109 (Availability of Official Information for Disclosure), we hereby request the following documents:

1. Minutes of the Public Information Review Board meeting of August 5.

2. The complete written transcript of the meeting.

3. Any opinion or memorandum of the Corporation Counsel stating that "the Mayor cannot exercise administrative control over the Washington Technical Institute."

Please note that Section 742 of the Home Rule Act states: "All meetings (including hearings) of any department, agency, *board*, or commission of the District government . . . at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting."

Further, the Home Rule Act states: "A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government."

We contend that a meeting of the Public Information Review Board for the purpose of reviewing our request and determining whether it has jurisdiction comes under the heading of "official action of any kind."

If the Board in its meeting of August 5 failed to comply with these provisions of the law, its decision can have no validity.

It is now more than two months since our original requests were made in letters dated July 7, 8, and 9.

Yours sincerely,

ROBERT PEAR,
Staff Reporter.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
OFFICE OF THE SECRETARIAT,
Washington, D.C., October 1, 1976.

Re Request for Information from the Public Information Review Board Meeting of August 5, 1976

Mr. ROBERT PEAR,
Staff Reporter, Washington Star-News,
Washington, D.C.

DEAR MR. PEAR: In response to your letter of September 13, 1976, I am enclosing a copy of the minutes of the August 5th executive session

of the Public Information Review Board, together with a copy of the Corporation Counsel's opinion of the same date.

The Board is not required to keep transcripts of its meetings under the provisions of the Mayor's Order 76-109, Section 5, Paragraph (b).

The Public Information Review Board, like any other Board, has within its purview the right to hold executive sessions in order to expedite its business.

Your specific request was for a review of the decision of Washington Technical Institute to deny you access to certain information. However, if you would like to request a hearing in order to present oral argument to the Board, you may do so by written request to my office.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely yours,

MARTIN K. SCHALLER,
*Executive Secretary,
District of Columbia.*

Enclosure.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
OFFICE OF THE SECRETARIAT,
Washington, D.C., August 11, 1976.

MINUTES—PUBLIC INFORMATION REVIEW BOARD, THURSDAY, AUGUST 5,
1976 (12 NOON)

An Executive Session of the Public Information Review Board was called to order by Chairman Gilbert on Thursday, August 5, 1976 at 12 noon. Members present were Mr. Ben Gilbert, Mr. Martin Schaller and Mr. Sam Eastman.

Chairman Gilbert reported to the Board the following considerations for review:

1. Mr. Robert Pear's request for information from the Washington Technical Institute.
2. Councilman Douglas Moore's request for information from the Police Department.

After discussion by the Board, the following recommended actions were approved:

1. Mr. Pear's Request—The unanimous decision of the Board was to inform Mr. Pear of the position of the Mayor and the Board in view of the opinion of the Corporation Counsel dated August 5, 1976. The Board further recommended that a letter be sent to Mr. Cleveland Dennard, President, Washington Technical Institute, requesting that he comply with the spirit of the Mayor's Order 76-109.

2. Councilman Moore's Request—The Board was advised that Councilman Moore was withdrawing his request. The Board complied.

The meeting adjourned at 12:20 p.m.

MARTIN K. SCHALLER,
Executive Secretary, D.C.

CORPORATION COUNSEL,
SPECIAL ASSIGNMENTS DIVISION,
August 5, 1976.

BEN W. GILBERT,
Director, Municipal Planning Office.

Information request by Washington Star pertaining to Washington Technical Institute. CCO No. 2017.

In a memorandum dated July 27, 1976, you requested my review of certain information requests made by reporters of the Washington Star concerning documents which are purportedly in the possession and control of the Washington Technical Institute. From the correspondence file that you forwarded, it appears as though requesters, not receiving a response to their inquiries within ten days, are appealing to the Public Information Review Board pursuant to Mayor's Order No. 76-109, dated May 4, 1976, 22 D.C. Reg. p. 6351. In your memorandum you state that the "key question is whether the material that the Star is requesting of WTI is covered by * * * Mayor's Order 76-109."

A reading of the Mayor's Order 76-109 indicates that its provisions govern an "agency" which in Section 1(a) is defined to be "an office, division, board, commission, or other entity of the Government of the District of Columbia under the administrative authority of the Mayor." Under the law, the Washington Technical Institute, its officers and employees, are under the control and jurisdiction of the Board of Trustees of the University of the District of Columbia. Secs. 31-1622, 31-1623, D.C. Code, 1973 ed., as amended, D.C. Law 1-36, eff. Nov. 1, 1975, 22 D.C. Reg. 29-7.

It is, accordingly, my opinion that Mayor's Order 76-109 is not applicable to requests for information made to the Washington Technical Institute, its officers or employees.

JOHN R. RISHER, Jr.,
Corporation Counsel.

IV. NEWS MEDIA ARTICLES ON BILL 1-119

[From the Washington Star, Feb. 7, 1976]

IN FOCUS—D.C. GOVERNMENT STANDS ALONE AS BASTION OF SECRECY

THE MAYOR SETS HIS OWN RULES ON DISCLOSURE

(By Robert Pear, Washington Star Staff Writer)

The District of Columbia government has no national security secrets to guard, no military plans or diplomatic cables. Yet trying to extract information from city bureaucracy can be more difficult than prying facts out of the Central Intelligence Agency or the Department of Defense.

Since the Federal Freedom of Information Act was passed in 1966 and strengthened in 1974, there have been vast improvements in the federal government's handling of information requests, but the District, a bastion of secrecy with its own, weaker version of the federal law, virtually ignores many requests for information—whether from news media, public interest groups or private citizens.

A "penchant for secrecy" pervades the District government, City Councilman David A. Clarke said at a recent public hearing on freedom-of-information proposals.

And Benny L. Kass, a lawyer who was counsel to the Senate and House committees that drafted the 1966 Freedom of Information Act, says: "I've given up trying to get information the legitimate way from the District of Columbia government. I use my other sources to get it."

While freedom-of-information statutes are working relatively well in Maryland and Virginia, where the attorneys general are attuned to the letter and spirit of the law, almost no one is satisfied with disclosure practices of the District government.

Richard N. Wolf, vice president of the Capitol Hill Restoration Society and self-described citizen activist, says: "It is impossible to find out from this amorphous blob (the District government) who is doing what, when and where."

By comparison with the federal government's willingness to parcel out information—which may be far from ideal—the District government's performance is often abysmal:

Item: On Dec. 16, it was disclosed that St. Elizabeths Hospital, a federal institution, had lost its national accreditation, its seal of approval in the hospital world. The full text of the accreditation report was available immediately from the National Institute of Mental Health.

On Dec. 10 District officials had announced that D.C. General Hospital had lost its accreditation. But the local officials made public only a one-page summary of the hospital's deficiencies, and specifically denied a request for the full report—the equivalent of the document released readily by NIMH.

Citing the mayor's 1971 freedom-of-information order, The Washington Star on Dec. 11 requested the full report, but not until four weeks later, Jan. 8, were copies of the document distributed. District officials justified the delay by saying they had been preparing an appeal in the interim period.

Item: Margaret A. Kohn, a lawyer with the Center for Law and Social Policy, a "public interest" law firm, said last October she wanted to examine minutes of the District's Health Planning Advisory Committee and related documents.

First, she had difficulty locating a copy of the mayor's information order. Then, when she eventually got access to the documents, she was forbidden to make Xerox copies. She offered to pay for photocopies, but was allowed only to copy the papers by hand.

She appealed to the Public Information Review Board for the privilege of making Xerox copies—a standard right under federal law. Eventually she got what she was seeking.

"It's not a high-priority item for me," Kohn said. "It was just an aggravation." District agencies seem to be utterly uninformed about freedom-of-information requirements, she said. "There's no comparison with the federal government, which seems to make every effort to comply."

Item: The D.C. Public Interest Research Group, a local consumer group, said last month that District agencies had answered satisfactorily only 26 of 85 written requests for information.

Reporting on a yearlong survey, Suki Parks and Robert C. Fisher of D.C. PIRG said another 42 percent of their requests went unanswered, while responses were unsatisfactory in another 27 percent of the cases.

"Agencies avoid complying with a request simply by not responding," they testified at a City Council hearing.

Many individual requests for information, especially on the local level, may seem trivial, but the underlying principle is profoundly important since it sets the tone for the relationship between citizens and their government.

Congress actually intended to include the District under the 1966 Freedom of Information Act, according to persons involved in drafting the law. Only by an oversight was the city left out.

The federal law applied to any "agency" in the executive branch. But Congress, according to Kass, forgot the District government was not an executive agency.

When it was discovered that the District had been exempted from the law, Kass said, former Sens. Robert F. Kennedy, D-N.Y. and Edward V. Long, D-Mo., introduced bills to bring the city under the terms of the federal law.

Mayor Walter E. Washington, however, immediately promised to take action on the city level. In November 1971 the mayor issued an order (Commissioner's Order 71-370) setting a freedom-of-information policy and establishing a Public Information Review Board to review requests denied by city officials.

But by virtually all accounts, the system is failing.

The D.C. Public Information Review Board has not met in more than a year, Martin K. Schaller, executive secretary to the mayor, acknowledged. The second of two public representatives on the five-member board has never been appointed.

And Schaller admits he does not comply with the time limit stipulated by the mayor's order, which requires a response to written requests for information within 10 working days of receipt.

Schaller say the 10-day limit, identical to the deadline on federal agencies, is not "realistic." He says he needs a month to process a request because often he must consult the corporation counsel, the lawyer for the District government.

Schaller says he makes "every effort not to hold a hearing" of the Public Information Review Board. The hearings, he says, are a "cumbersome procedure."

Instead, he says, tries to coax the information out of city officials by informal "persuasion."

Under the Mayor's order, personnel files and certain police files may legitimately be kept secret, but the District government's failure to abide by the order is far deeper than its difficulty in determining whether specific requests are legitimate or not.

For example, the D.C. Register, official publication of the city government often arrives after the events it announces have occurred.

The issue dated Jan. 20 arrived Jan. 29; it announced public hearings of the City Council that took place Jan. 22 and 26. Schaller, executive secretary to the mayor, attributed delays to the burden on the city's printer.

Opinions of the D.C. Corporation Counsel, representing the legal foundation for many legislative and executive decisions, are not published in the D.C. Register or anywhere else, lawyers note. In contrast, the opinions of the attorneys general of Maryland and Virginia are published each year and are available in many county courthouse libraries.

Each jurisdiction sets its own rules for public access to official records and documents, but few local laws are as rigorous as the amended federal statute, and few have been tested so extensively.

Forty-five states have statewide open-records laws. Virtually all states have open-meeting laws of one kind or another.

The District's freedom-of-information rules, however, were set by the executive, whereas legislatures have set the rules for the federal and most state governments.

"It is an age-old truth," say Jim Heller of the local American Civil Liberties Union chapter, "that the executive branch of government only grudgingly reveals to its citizens information about itself which might be embarrassing."

A more liberal freedom-of-information bill, introduced by Arrington Dixon, is pending before the D.C. City Council. It would give citizens a right of access to most records in the possession of the mayor and executive agencies. The corporation counsel's office has endorsed the principle, but pleaded for many more exceptions to disclosure.

Under the mayor's order, there is no provision for judicial review and there are no sanctions against those who disobey the order. Forty-four percent of the state laws give a person the right to go to court for review of a denial of information by a public agency. Nineteen states have penalty sections that subject a public official to criminal sanctions if he illegally denies access to public documents.

Larry P. Ellsworth, chairman of the D.C. Bar's committee on access to government information, says "few government employes, and even fewer members of the public, know or understand" the mayor's order.

Ellsworth, who used to work for Ralph Nader's Freedom of Information Clearinghouse, says the legislative and judicial branches, as well as the executive, should be covered by a freedom-of-information law.

At least 11 states have FOI laws covering the executive and legislative branches. (The federal act does not cover Congress).

In varying degrees, at least three states—California, Connecticut and Montana—include the judiciary under open-records laws, Ellsworth said.

A. Franklin Anderson, deputy director of the D.C. Office of Human Rights, acknowledged the unpredictable nature of information policy when he said, "It varies from one day to the next, depending on the way individual employees feel toward the person who's asking for information."

The District human rights agency, like its counterpart in Montgomery and Prince Georges Counties and like the federal Equal Employment Opportunity Commission, keeps complaints confidential until they reach the stage of a public hearing or a court action.

In Virginia, by contrast, Atty. Gen. Andrew P. Miller ruled last year that under state law, complaints filed with the Fairfax County Human Rights Commission must be open for public inspection and copying.

Avis C. Bell, executive director of the Fairfax Rights Commission, said complaints now carry the notation: "This document is subject to public disclosure." Remarkably, he said, the open-access policy has not affected the number or content of complaints.

Maryland Atty. Gen. Francis B. Burch denied access, in 1973, to information about cost overruns on the second span of the Chesapeake Bay Bridge. Disclosure of the data, eagerly sought by some reporters and state legislators, would undermine the government's position in litigation of claims, he said.

The attorney general's office in Maryland, in recent opinions, has ruled in favor of disclosing the following data: a list of all lawyers, doctors and adjusters used by the state auto insurance fund; names of patients at Patuxent Institution; lists of bank shareholders kept by the state bank commissioner; names and addresses of public school pupils kept by a county board of education.

The right of city bureaucrats to speak to the press is often less well established than that of their counterparts in federal government.

Commenting on "secrecy by gag rule" in local government, Prof. M. L. Stein of the New York University School of Journalism said, "Administrators and departmental chiefs may order their underlings to tell the press nothing, arrogating to themselves the sole right to make official statements—if any are made at all."

In the District, employees of the city's Department of Human Resources have complained they were under a "gag rule," although the agency director, Joseph P. Yeldell, denies it.

"Many people turn to their local government as the last bastion of freedom of information," Prof. Stein said. "They see in the city council, the board of education or the zoning commission, the oldtime virtue of direct access to those in power. This may be the greatest myth of all."

[From the Washington Star, Nov. 4, 1976]

OPPOSITION MOUNTS TO D.C.'S FREEDOM OF INFORMATION BILL

(By Robert Pear, Washington Star Staff Writer)

Several D.C. government agencies have objections to the sweeping Freedom of Information bill passed by the City Council, suggesting that the mayor might be advised to veto the measure as it now stands.

In interviews yesterday, the chief concerns expressed by city officials were that the bill could compromise police investigative records, cause administrative burdens and impose substantial, unrecoverable costs.

In addition, city officials said that in the last few months they had alleviated some of the problems that gave rise to the bill, making "dramatic improvements" in the handling of information requests under a 1971 mayoral order..

The bill, introduced by Councilman Arrington Dixon, was passed by the council Oct. 12. It is supposed to be transmitted today or tomorrow to Mayor Walter E. Washington, who will have 10 working days to sign or veto the measure.

The bill provides citizens a tool for enforcing their right of access to certain government information. They could appeal a denial to D.C. Superior Court, and an agency's failure to respond after 10 days would be construed as a denial.

D.C. Corporation Counsel John R. Risher Jr., an influential adviser to the mayor, said he would like to see the council call back and reconsider the bill.

However, he said his objections were not strong enough to justify recommending a veto. Other city officials, who asked not to be identified, said they might recommend a veto.

"Two things concern me," Risher said. First is a ceiling of \$10 on the amount D.C. agencies could charge a customer for searching their files to find a document. There is no such limit in the federal Freedom of Information Act, and Risher said the council probably lacks legal authority to set such a limit.

It would be preferable to let city officials waive or reduce the fee in selected cases, Risher said.

Secondly, Risher said, he would favor a broader exemption for investigative records, noting that the Federal Bureau of Investigation and the Central Intelligence Agency had incurred "tremendous expenses" in handling requests under the amended federal law.

He predicted that the D.C. Police Department might be similarly "inundated" if the council bill becomes law.

An FBI spokesman said the bureau has 200 people working full-time on Freedom of Information requests, with more than 100 other employees soon to be assigned. The estimated cost of processing requests in the past fiscal year was \$2.6 million, he said.

Robert E. Greenberg, assistant general counsel of the D.C. Police Department, said: "The real question is, Do they (the City Council) want a bunch of clerks running around looking for records, or do they want an effective crime-fighting force?"

He said he feared the bill might set off "mass hysteria" among people eager to see their arrest records. Individuals already are entitled to examine their own arrest records, but city law forbids the police to disseminate the records publicly.

"Local law enforcement agencies shouldn't be saddled with the same kind of policy guidelines as the federal government," Greenberg said. "A local police department has a different mission. We are more strictly concerned with criminal justice, so there is more reason to protect our records."

[From the Washington Star, Sept. 8, 1976]

THE DISTRICT "SUNSHINE" BILL

There is no automatic blessing of good government in "sunshine" orders or legislation. The absence of such, however, can inhibit decent representative government. The District City Council shortly will be considering a local "freedom of information" measure that would provide citizens with a crucial lever—a legally enforceable right to most records of the executive branch.

In reporting the bill to the City Council, the committee on judiciary and criminal law was severe about current procedures. Those are spelled out in an order first issued by Mayor Walter E. Washington in 1971 and reissued last May (the District was excluded from the federal Freedom of Information Act by a "drafting oversight").

The council committee, chaired by David A. Clarke, contended there is "a disturbing record of government inertia," "intransigence" and "deliberate non-compliance" under that system. We would call it idiosyncratic.

A central provision of the council bill would provide for expeditious appeal to Superior Court when citizens believe requests have been handled inadequately or ignored. Under the current order, there exists a review board, appointed by the mayor; its decisions may be appealed to him but not beyond. The committee in its report said that the head of that body "indicated that the board (has) met only several times since its inception; that he made a point of not calling hearings because they are time consuming and expensive; and that the board (has) had a public-member vacancy for several years."

That sort of *modus operandi* is not unlike trying to fly to Chicago by boat.

In another departure from Mayor Washington's order, a "no response" is treated as a final denial; that could gnaw a bit at the apathy sometimes encountered by freedom-of-information requests.

The breadth of information subject to the proposal is not dramatically different from that under the present procedure. But consultant reports, those ubiquitous and often influential documents, would lose their present privilege of being beyond citizen scrutiny. The council bill would exempt specific categories of information, including that which would cause "substantial harm" to a person or firm's competitive position; personal information, disclosure of which would constitute "a clearly unwarranted invasion of personal privacy; investigatory records compiled for law-enforcement purposes; internal memorandums containing advice on policy.

The Council bill strikes us as thoughtful and needed. One slight deficiency, perhaps, as *The Star's* Robert Pear noted: "Just as the federal law does not cover Congress, so the local bill would not apply to City Council records."

[From the George Washington University Law School Newspaper "The Advocate,"
Feb. 8, 1976]

D.C. GOVERNMENT NOT FREEING INFORMATION

The D.C. government is not effectively complying with freedom of information regulations that require nearly all government records to be readily available to the public, according to a study by the D.C. Public Interest Research Group (DCPIRG).

PIRG found that of 85 total requests for information, only 26 (30.6%) were answered satisfactorily. Government agencies did not respond to 36 (42.3%) requests and responded unsatisfactorily to 23 (27.1%). The unsatisfactory responses were either not received within the 10 working days specified by the law or did not contain all the information requested.

Under the present freedom of information law, city agencies must respond to written requests for information within 10 working days after receipt of the request. PIRG students Robert Fisher and Suki Parks of George Washington University presented the results of the study at hearings on proposed legislation to reform these procedures.

PIRG found that of 51 requests that mentioned the freedom of information law, 16 (31.4%) were responded to satisfactorily, 14 (27.5%) received unsatisfactory responses and 21 (41.1%) received no response.

Of 34 requests that did not mention the law, 10 (29.4%) received satisfactory responses, 9 (26.5%) received unsatisfactory responses, and 15 (44.1%) received no response.

The proposed legislation, introduced by Councilmember Arrington Dixon, would change the response period to 15 working days and eliminate the need for a specific response to delays. Fisher and Parks recommended that the provisions of the present regulations be left intact. They noted that more than 70 percent of the responses were received within the 10-day period. PIRG also recommended that the scope of Dixon's bill which, like the present regulations, applies only to the executive branch be broadened.

In addition, PIRG urged the council to establish an independent commission to review denials of requests for information. This commission, similar to one established in New York state, would be composed of government, citizen and media representatives. It would act as an intermediary between the government agency and the courts by reviewing denials of information.

SURVEY FINDS D.C. TIGHT-LIPPED

The District government is not effectively complying with city freedom-of-information regulations that require government records to be available to the public, according to a survey made by a consumer organization.

The D.C. Public Interest Research Group said that of 85 written requests for information, only 26 were answered satisfactorily by city agencies.

Suki Parks and Bob Fisher of D.C. PIRG, a consumer-oriented student group, described the survey's results yesterday at a D.C. City Council hearing on information and privacy legislation.

They defined a satisfactory response as a timely reply that either granted the request or described appeal procedures in the letter of denial.

Under a 1971 mayor's order, District agencies are supposed to respond to written requests for information within 10 working days after receipt of the request.

Parks and Fisher said that 42 percent of their requests went unanswered, while responses were unsatisfactory in 27 percent of the cases.

They said also that city agencies failed to publish a list of their record-copying fees as required by the mayor's order. They said that appeal procedures proved ineffective in two of the three cases where they were tried, and that four out of five agencies failed to keep a file of denial letters.

The board designated to hear freedom-of-information appeals rarely meets, they said.

Martin K. Schaller, executive secretary to the mayor, said he lacked the resources to monitor compliance with the information regulations.

V. IMPLEMENTING REGULATIONS, GUIDELINES AND RELATED DOCUMENTS

OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR,
Washington, D.C., March 9, 1977.

MEMORANDUM

To: Gregory Mize, Committee Clerk, Council of the District of Columbia.

From: Matthew S. Watson, District of Columbia Auditor.

Subject: Freedom of Information Act Regulations.

Attached is a draft of Freedom of Information Act Regulations which I plan to propose when the Act becomes effective at the end of the month.

Also enclosed for your information is a copy of a memo I have sent to John Risher concerning the provision regarding appeals to the Mayor for independent agencies.

Attachments.

OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR,
Washington, D.C., March 9, 1977.

MEMORANDUM

To: John Risher, Esq., Corporation Counsel, D.C.

From: Matthew S. Watson, District of Columbia Auditor.

Subject: Freedom of Information Act Regulations.

Attached is a draft of Freedom of Information Act Regulations which I plan to propose when the Act becomes effective at the end of the month.

I don't foresee any real problem, however, Section 207 dealing with a right of appeal to the Mayor gave me some difficulty in reconciling such an appeal with my Office's independent status. Since the Act appears to make the Mayoral remedy discretionary (see Section 202(e)), I have provided in the regulations that an appeal from a denial of a request would go directly to Superior Court. You might wish to provide in the Mayor's regulations concerning appeals that they apply only to agencies subject to his administrative control.

Attachment.

OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR,
Washington, D.C.

PROPOSED RULEMAKING

This District of Columbia Auditor hereby solicits comments on the following proposed regulations concerning availability of information. This chapter implements D.C. Code, Sec. 1-1501 as amended by D.C. Law ——— (Freedom of Information Act of 1976). These regulations

establish procedures for obtaining information and records from the Office of the D.C. Auditor. The Auditor proposes to adopt these regulations after the expiration of 30 days from the date of this Register. Interested persons may submit comments to the Office of the District of Columbia Auditor, Room 945, 1329 E Street, N.W., Washington, D.C. 20004.

MATTHEW S. WATSON,
District of Columbia Auditor.

CHAPTER 4—FREEDOM OF INFORMATION

1. How a Request Is Made

A request to inspect an identifiable record or other information in the possession of the Office of the D.C. Auditor, not available in the usual course of operation, should be submitted on forms available from the Office or in a written letter to the D.C. Auditor, 1329 E Street, N.W., Suite 945, Washington, D.C. 20004. The request should have "Freedom of Information Request" or "Information Request" marked clearly on the outside envelope.

2. Description of Records

The request should sufficiently identify the records sought to enable the Auditor's Office to locate them without unreasonable effort. Where possible, specific information which may help identify the records should be supplied. If it is determined by the Auditor that the request does not sufficiently identify the information requested, the requester shall be notified of the need for additional clarification.

3. Response by the Auditor Within Ten Days

Within 10 days, excluding Saturdays, Sundays and legal holidays, of receipt of a request, a determination as to whether the information can be made available shall be made and the requester notified of the determination.

4. Denial of Request

Only the D.C. Auditor may deny a request and such a denial may be made only if the information requested is within one of those areas designated as exempt from disclosure pursuant to D.C. Code, Section 1-1501 as amended. If the request seeks documents prepared by another District of Columbia agency, the request shall be forwarded to the preparing agency and the requester notified.

5. Extension of Time

In unusual circumstances, the Auditor may extend the time for initial determination of requests, for a period of ten days excluding Saturdays, Sundays and legal holidays. All extensions shall be made in writing and shall detail the reason for the extension and the date on which a determination will be made.

Unusual circumstances in which an extension may be issued include, but are not limited to:

(a) The need to search for and collect and examine a voluminous amount of separate and distinct records which are demanded in a single request.

(b) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

6. *Delay in Request*

In the event that no determination has been made at the end of the initial ten day period, or the extension thereof, the requester may deem the request denied, and exercise a right of appeal.

7. *Record Cannot Be Located or Does Not Exist*

If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

8. *Appeal*

In the event that the Auditor denies a request to inspect information in this Office, suit may be brought in the Superior Court to compel production of the requested record. The Auditor shall notify the requester of this right upon denial of a request or part thereof.

9. *Fees*

There shall be no charge for providing access to information. The first 100 pages copied pursuant to a request shall be without charge. Copies in excess of 100 copies shall be charged at \$0.10 per page. The requester shall be notified in advance of charges and no chargeable copies shall be made without written approval of the requester. If it is determined by the Auditor that furnishing copies without charge is in the best interests of the public, all or part of the charge may be waived.

10. *The Auditor shall maintain a file of all requests pursuant to this Chapter and the disposition of each.*

DISTRICT OF COLUMBIA REGISTER,
April 15, 1977.

PROPOSED RULEMAKING

BOARD OF TRUSTEES UNIVERSITY OF THE DISTRICT OF COLUMBIA

(RESOLUTION No. UDC 77-8)

Subject: Procedures for Implementation of the D.C. Freedom of Information Act of 1976.

Whereas, the Board considers itself bound by the D.C. Council's Freedom of Information Act (D.C. 1-178) and has so stated in UDC Resolution No. 77-3 dated January 27th, 1977; and

Whereas, it is necessary for the Board and the University to adhere to rules and procedures that will ensure the efficient and timely handling of requests which are subject to the law;

Therefore, be it resolved that the Board of Trustees hereby adopts the procedures, attached herewith, that will govern the handling of requests made to the University and the Board; and

Be it further resolved, that the aforementioned procedures become effective immediately.

Submitted by: Legislation, Organization and Rules and Public Affairs and Community Relations Committees.

Date: March 24, 1977.

Approved by the Board As Proposed Rulemaking March 24, 1977.

RONALD H. BROWN,
Chairman of the Board.

PROCEDURES GOVERNING REQUESTS UNDER THE FREEDOM OF INFORMATION POLICY OF THE UNIVERSITY

I. PERSONNEL

A. A Freedom of Information Officer will be responsible for the processing of all official requests for information/records pertaining to the Board of Trustees and the University of the District of Columbia.

B. A Freedom of Information Liaison Officer, located in the Office of the President, will be designated from each campus of the University. The duty of this position will be to assist the Freedom of Information Officer in the enforcement of the District of Columbia Freedom of Information Act of 1976.

II. PROCEDURES

A. All requests which are addressed to the Board of Trustees, a member of the Board of Trustees, or any individual or entity of the University of the District of Columbia will be channeled through the Freedom of Information Officer for response.

1. During the interim period, until such time as a President of the University assumes office, requests for any record(s) of any component institution of the University should be made, in writing, to the University Freedom of Information Officer, Special Assistant to the Board for Information Disclosure, Board of Trustees, University of the District of Columbia, 1025 Vermont Avenue, N.W., Suite 606, Washington, D.C. 20005.

2. Upon appointment of a President of the University, the authority for enforcement of the D.C. Freedom of Information Act will be transferred to the Office of the President of the University of the District of Columbia.

3. Each request will be date-stamped upon receipt. The request will then be classified as either "simple" or "complex". When the material to be searched is voluminous or when careful examination of the material is necessary to determine if it is releasable, the request will generally be classified as "complex". Requests will be processed sequentially in each category according to the date and time of receipt.

4. All requests will be acknowledged upon receipt by first-class mail addressed to the requestor.

5. The University reserves the right to disseminate information by one of two (2) methods: (A) by distributing copies of the requested material to the requestor, or (B) by giving the requestor access to the material.

6. After a request has been processed, the requestor will be notified by first-class mail that the materials are ready for either pickup or examination.

7. Fees for the searching and copying of records will be assessed in accordance with Sec. 202(b) of the Freedom of Information Act of 1976.

8. Requests will generally be handled within ten (10) days (excluding Saturdays, Sundays and legal holidays). However, when a request is particularly complex the University reserves the right to take up to twenty (20) working days to process the request.

9. When a request for information is denied, the requestor will be notified by first-class mail. The letter of denial will give the specific reasons for the denial including citation to the particular exemption(s) relied on as the authority for the denial. The requestor will be informed of his right to appeal the denial to the Mayor, as provided for in Sec. 207 of the Act. Denied requests will be personally reviewed and ratified by the University Freedom of Information Officer. The University Freedom of Information Officer will personally sign all letters of denial.

OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR,
Washington, D.C., May 27, 1977.

RULES AND REGULATIONS—ADOPTION OF RULES

Whereas, it appears desirable to adopt permanent rules with regard to the availability of information from the Office of the District of Columbia Auditor; and

Whereas, notice of proposed rulemaking was given April 1, 1977 (D.C. Register, Volume 23, Number 40, pages 7825-7828); and

Whereas, the Auditor has considered all comments filed with him;

Now, Therefore, the Rules as proposed and published in the District of Columbia Register, April 1, 1977, which are incorporated by reference herein, are ADOPTED with the following addition to paragraph 5. "No more than one extension shall be granted with regard to a single request."

MATTHEW S. WATSON,
District of Columbia Auditor.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
 ADMINISTRATIVE ISSUANCE SYSTEM,
October 24, 1977.

MAYOR'S MEMORANDUM 77-175

To: Heads of Departments and Agencies.

Originator: The Corporation Counsel, D.C.

Subject: The District of Columbia Freedom of Information Act.

On March 29, 1977, D.C. Law 1-96, the D.C. Freedom of Information Act, 23 D.C. Reg. 3744 (1977), became effective. This law, which supersedes Mayor's Order 76-109, provides for an expanded and expansive public access to records of government agencies and departments. Draft regulations to implement the law are being prepared for publication in the D.C. Register.

As the scope of the act is quite broad, there should be few occasions for denying requests, and the Office of the Corporation Counsel will assume that requests are being honored. Thus, as the act places primary responsibility for responding to a request upon the department or agency to which the request is directed, this Office will *not* respond

to a Freedom of Information request directed to an agency or department unless:

a. This Office is advised of the request under a written memorandum, signed by the agency head *only* (or in his absence, his principal deputy), within four days of that agency's receipt of the request (excluding Saturdays, Sundays and holidays), and

b. The memorandum of advice is accompanied by the requested document(s) (or where appropriate, sets forth in detail the content of the requested documents), refers to the specific exemption provision that arguably authorizes the withholding of the document, and the reasons in support of the conclusion for refusing to comply with the request.

All memoranda of advice should be directed to the attention of Assistant Corporation Counsel Joy A. Chapper, Special Assistant to the Corporation Counsel.

DISTRICT OF COLUMBIA REGISTER,
November 4, 1977.

DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT, THE NATIONAL CAPITAL HOUSING AUTHORITY

NOTICE OF RULEMAKING

NCHA Order No. 77-15 Adopting Freedom of Information Procedures and Rules Outlining Procedures for Determining Emergency or Urgency of Housing Need

The Director of the Department of Housing and Community Development, acting as the National Capital Housing Authority gave notice in the August 12, 1977 D. C. Register of proposed rulemaking adopting Freedom of Information Procedures and Rules outlining procedures for determining emergency or urgency of housing need. Comments were invited from interested persons.

Having considered and analyzed comments on the proposed procedures, the Director hereby gives notice of the adoption of NCHA Order No. 77-15.

NCHA Order Adopting Freedom of Information Procedures and Rules Outlining Procedures for Determining Emergency or Urgency of Housing Need

Whereas, the D.C. Freedom of Information Act of 1976, D.C. Law 1-76 requires each Agency to establish procedures for interested citizens to request and the Agency to provide information regarding its programs and activities;

Whereas, Freedom of Information rules have been presented to and considered by the Authority; and

Whereas, there is a need to clearly prescribe rules for determining emergency or urgency of housing needs for admission into NCHA-owned housing;

Whereas, rules for Determining Emergency or Urgency of Housing Need for Admission into NCHA-owned Housing have been presented to and considered by the Authority;

It is hereby ordered that:

1. The Freedom of Information Procedures contained in Exhibit A and incorporated into this Order are hereby adopted.

2. The rules outlining Procedures for Determining Emergency or Urgency of Housing Needs as contained in Exhibit B and incorporated into this Order are hereby adopted.

Date: October 10, 1977.

LORENZO W. JACOBS, Jr.,
The National Capital Housing Authority.

EXHIBIT A

NATIONAL CAPITAL HOUSING AUTHORITY FREEDOM OF INFORMATION PROCEDURES

Section 1. *Purpose and Scope.*

These rules are intended to inform interested persons when and where they may inspect and copy the public records of the Authority pursuant to the D.C. Freedom of Information Act of 1976, D.C. Law 1-76, Section 202(a). All other procedures concerning the availability of such records shall be as otherwise provided in the Act.

Section 2. *Request for Identifiable Records.*

a. *Making a Request.* A request for a record of the Authority which is not ordinarily made available shall be made in writing with the letter and envelope clearly marked "FOI Request". A request shall be addressed to the Acting Administrator of the Property Management Administration, 1170 12th Street, Northwest, Washington, D.C. 20430. Any request not marked and addressed in the manner specified shall be so marked by Authority personnel as soon as it is properly identified and forwarded to the Acting Administrator. The Acting Administrator shall designate a Freedom of Information Officer (FOI Officer) to whom all requests for records not ordinarily made available shall be forwarded. An incorrectly addressed request shall not be deemed received for purposes of computing the time period set forth in Section 202(c) and (d) of the Act until forwarded to the FOI Officer. Upon receipt of such an incorrectly addressed request, the FOI Officer shall notify the requester of the date on which the time period commenced to run.

b. *Description of records sought.* A request for access to a record must reasonably describe that record by reference to the subject matter, approximate date of issuance if known, and the official or office within the Authority which is either the source of or responsible for maintaining the record.

c. *Nonconforming requests.* If the FOI Officer determines that a request does not adequately describe the record sought, the FOI Officer shall deny the request with an explanation of the reasons why it failed to comply with the requirements of paragraph b., above. The FOI Officer shall also extend to the requester an opportunity to resubmit the request in a manner complying with those requirements.

Section 3. *Processing Requests.*

The FOI Officer shall make and retain a copy of each request and forward it to the division within the Authority having primary responsibility for the record requested. Within ten (10) business days of the date of receipt of an identifiable request (or twenty (20) business days if an extension is granted as provided in Section 202(d)

of the Act) the head of the division shall determine whether to comply with or deny the request. The head of the division shall be the employee responsible for the decision to deny the request within the meaning of Section 203(a)(2) of the Act and the FOI Officer shall inform the requester of the decision to comply with or deny the request.

Section 4. *Responses to Requests.*

a. *Granted Requests.* The FOI Officer shall notify the requester in writing as to where and when the record may be inspected and copied, if desired, and any applicable fee.

b. *Denied Requests.* The FOI Officer shall notify the requester in writing, in the manner provided in Section 203 of the Act, when a record may not be inspected.

Section 5. *Fees.*

a. *Copies.* For copies of documents, the fee for which is not established by law, regulation, or Mayor's Order, the fee shall be \$0.10 per copy of each page. Only one copy per page shall be supplied.

b. *Searches.* For each one quarter hour in excess of the first quarter hour spent searching for and producing a requested record, the fee shall be \$5.00 or actual cost, whichever is less. No such charge shall exceed \$10.00.

c. *Waiver or reduction.* A waiver or reduction of fees may be made by the Acting Administrator when he determines that it is in the public interest because furnishing the information shall primarily benefit the general public.

DISTRICT OF COLUMBIA REGISTER,
November 18, 1977.

PROPOSED RULEMAKING

OFFICE OF BUDGET AND MANAGEMENT SYSTEMS, DISTRICT OF COLUMBIA
GOVERNMENT—FREEDOM OF INFORMATION REGULATIONS

1. *Purpose and Application*

This contains the rules and procedures to be followed by all agencies, offices, and departments (hereinafter "agency") of the District of Columbia Government which are subject to the administrative control of the Mayor in implementing the Freedom of Information Act, D.C. Law 1-96, 23 D.C.R. 3744.

Employees may, however, continue to furnish to the public, informally and without compliance with these procedures, information and records which they customarily furnish in the regular performance of their duties prior to enactment of D.C. Law 1-96.

2. *Statement of Policy*

The policy of the District of Columbia Government is one of full and responsible disclosure of its identifiable records consistent with the provisions of D.C. Law 1-96. All records not exempt from disclosure will be made available. Moreover, records which may be exempted from disclosure will be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest.

3. *Agency Responsibility*

The ultimate responsibility for responding to requests for records of an agency is vested in the agency head. Each agency head may designate an individual as the information officer of the agency and may delegate to that individual the authority to grant and deny requests.

4. *Requests for Records*

a. A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency. Although oral requests may be honored, a requester may be asked to submit in writing a request for records not customarily made available. Any written request for records covered by these regulations shall be deemed to be a request for records pursuant to the Act whether or not the Act is mentioned in the request. When a request is made in writing, both the envelope and the letter should clearly indicate that the subject is a freedom of information request.

b. A request should reasonably describe the desired record. Where possible, specific information regarding dates, files, titles, file designation, etc. should be supplied.

c. Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester will be contacted and asked to supply the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.

5. *Time Limitations*

a. Within ten days (excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request, the agency shall determine whether to comply with or to deny the request and shall dispatch such determination to the requester, unless an extension is made under paragraph 5. b.

b. In unusual circumstances as specified in this paragraph, the agency may extend the time for initial determination on a request up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request:

(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) the need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

c. If no determination has been dispatched at the end of the ten-day period, or the extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with paragraph 9. a. When no determination can be dispatched within the applicable time limit, the agency shall nevertheless continue to process the request; on expiration of the time limit the agency shall inform the re-

quester of the reason for the delay, of the date on which a determination may be expected, and of his right to treat the delay as a denial and of the appeal rights provided by the Act. The agency may ask the requester to forego appeal until a determination is made.

6. Exemptions

a. A requested record *shall not be withheld* from inspection or copying *unless* it both (1) comes within one of the classes of records exempted by D.C. Law 1-96; and, (2) *there is need in the public interest to withhold it.*

b. The classes of records authorized to be exempted from disclosure are those which concern matters that are:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(A) interfere with enforcement proceedings,

(B) deprive a person of a right to a fair trial or an impartial adjudication,

(C) constitute an unwarranted invasion of personal privacy,

(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source.

(E) disclose investigative techniques and procedures not generally known outside the government,

(F) endanger the life or physical safety of law enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interests of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

c. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of those portions which are exempt under this section.

7. Responses to Requests

a. When a requested record has been identified and is available, the agency shall notify the requester as to where and when the record is available for inspection or copies will be available. The notification shall also advise the requester of any applicable fees.

b. A response denying a written request for a record shall be in writing and shall include:

(1) the identity of each person responsible for the denial;

(2) a reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation of how the exemption applies to the record withheld; and

(3) a statement of the appeal rights provided by the Act.

c. If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

8. Fees.

a. An agency may establish and collect fees for search and copies commensurate with the actual cost of each service. Fees must be established in accordance with the procedures outlined in Mayor's Order 75-257, December 2, 1975, concerning user fees. In the event that no specific fees are established by an agency, charges for services rendered in response to information requests shall be as follows:

| | |
|--|--------|
| 1. Searching for records, per quarter hour, after 1st hour, by clerical personnel. (Maximum of \$10 for each request)----- | \$1.50 |
| 2. Nonroutine searching, per quarter hour, by supervisory personnel----- | 3.00 |
| 3. Copies made by electrostatic copy machines. (Maximum of 2 copies will be provided) ----- | 10 |

b. When a response to a request requires a service for which no fee has been established, the direct cost of such service may be charged, but only if the requester has been notified of such cost before it is incurred.

c. Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fees or such portion thereof as can readily be estimated. The notification shall offer the requester the opportunity to confer with agency personnel in order to reformulate the request. A request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. In appropriate cases an agency may require an advance deposit.

d. A charge of \$1.00 shall be made for each certification of true copies of agency records.

e. Search costs, not to exceed ten dollars for each request, may be imposed even if the requested record cannot be located. No fees shall be charged for examination and review by an agency to determine whether a record is subject to disclosure.

f. Fees must be paid in full prior to issuance of requested copies.

g. Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the D.C. Treasurer and mailed or otherwise delivered to the head of the agency. The agency will not assume responsibility for cash which is lost in the mail.

h. A receipt for fees paid will be given only upon request. No refund will be made for services rendered.

i. An agency may waive all or part of any fee when it is deemed to be either in the agency's interest or in the interest of the public.

9. Review of Denials

a. When a request for records has been denied in whole or in part by an agency, the requester may appeal the denial to the Mayor or may seek immediate judicial review of the denial in the Superior Court.

b. An appeal to the Mayor shall be in writing, and shall include a statement of the circumstances, reasons or arguments advanced in support of disclosure, and a copy of any written denial issued under paragraph 6. b. The appeal must be filed with the Executive Secretary, D.C., within ten working days after issuance of the written denial, or after the expiration of the applicable time limits without a determination by the agency.

c. Unless the Mayor otherwise directs, the Executive Secretary, D.C. shall act on behalf of the Mayor on all appeals under this section.

d. A written determination with respect to the appeal shall be made within ten working days of the filing of the appeal. If the records, or any segregable part thereof, are found to have been improperly withheld, the Executive Secretary, D.C. shall order the agency to make them available. If the agency continues to withhold the records, the requester may seek enforcement of the order in the Superior Court.

e. *A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it.* The denial shall also inform the requester of the right of judicial review.

f. If no determination has been dispatched at the end of the ten day period, the requester may deem his request denied, and exercise his right to judicial review of the denial.

10. Records Maintained by Agencies

a. Each agency shall make and maintain files containing all material pertaining to each request for information, including copies of correspondence. The material shall be filed by individual request.

b. Each agency shall also maintain records permitting annual reporting of the total number of requests made to the agency; the number of requests granted and, denied, in whole or in part; the number of times each exemption was invoked as the reason for non-disclosure; the amount of fees collected; and, any other information relating to agency compliance with the terms of the Act.

c. Each agency shall maintain a file, open to the public, which shall contain copies of all letters of denial.

d. Where the release of the identity of the requester or other identifying details related to the request would constitute a clearly un-

warranted invasion of personal privacy, the agency shall delete identifying details from the copies of the documents maintained in the public file.

11. Oversight

On or before the 30th day of June of each calendar year, the Executive Secretary, D.C. shall compile and submit to the Council of the District of Columbia, on behalf of the Mayor, a report covering the disclosure activities of each agency and of the Executive as a whole during the preceding calendar years.

Interested persons may submit comments in writing to Mr. George L. Jenkins, Jr., Assistant Director, Executive Management Division, Room 400, District Building, 4th & E Streets, N.W., Washington, D.C., 20004, no later than thirty (30) days after publication of this notice.

CORPORATION COUNSEL,
LEGAL COUNSEL DIVISION,
January 12, 1978.

MEMORANDUM, GOVERNMENT OF THE DISTRICT OF COLUMBIA

LCD 78-326.

To: Kenneth Back, Director, Department of Finance and Revenue.
From: Louis P. Robbins, Principal Deputy Corporation Counsel, D.C.
Subject: Request for Release of Tax Delinquency Lists. CCO No. 3631.

This is in response to your request for our opinion concerning the authority of the Department of Finance and Revenue to release to the press selected lists of tax delinquents. The circumstances as you relate them are as follows:

Mr. Phil Shandler, a reporter for the Washington Star, orally requested a list of tax delinquents for the various D.C. taxes. Mr. Eastman, Public Affairs Officer, requested that we meet with Mr. Shandler to discuss what might be made available in line with his request.

Mr. Shandler was advised that it was not administratively feasible to provide him with a complete list of all tax delinquents but that we would attempt to develop a selective list of some of the larger business and individual income tax delinquent accounts.

After much record searching and research, a list of 50 of the larger business tax delinquent accounts contained on the Department of Finance and Revenue's records as of October 14, 1977 and a list of 25 of the larger individual income tax delinquent accounts contained on the Department of Finance and Revenue's records as of October 14, 1977, were prepared. Since these lists are, of necessity, selective in nature, and the names of the companies and individuals have not been requested under the Freedom of Information Act, your opinion is requested as to whether or not this Department can legally release such selective lists to the press under the provisions of Section 47-1564c of the D.C. Code.

As set forth below, the lists in question are not records which the Department is prohibited from disclosing by virtue of D.C. Code § 47-1564c, and under the terms of the District of Columbia Freedom of Information Act, they may not be withheld.

It is important to emphasize at the outset that the request must be treated as one made under the Freedom of Information Act, D.C. Law 1-96, 23 D.C. Reg. 3744, at least for the purpose of determining whether the requested information may be withheld.¹

Under that act, an agency's authority to disclose its records² is presumed, and a requested record must be released unless it falls within one of the seven specific exemptions to the act. Even then, unless disclosure is prohibited by law, an agency may not withhold a record unless disclosure is demonstrably not in the public interest.³

There is no statutory exemption which would authorize the withholding of the delinquency lists. Although the act provides an exemption for information specifically exempted from disclosure by another statutory provision, D.C. Code, § 47-1564c does not qualify as such a provision with respect to the delinquency lists. The text of the exception is as follows:

Section 204. (a) The following matters may be exempt from disclosure under the provisions of this title:

* * * * *

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute—

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

As indicated in the referenced opinion of the Corporation Counsel dated February 25, 1975, the release of the tax delinquency lists is not prohibited by section 47-1564c. Thus the Freedom of Information Act exemption is inapplicable.

The Department has expressed one further concern regarding the release of these lists, which were prepared in October, 1977. That is, that in the intervening period some or all of the listed deficiencies may have been paid. My recommendation is that the Department emphasize on the documents that the lists represent tax delinquent accounts as of the October date. The Department could, of course, update the lists by way of addenda.

¹ The draft regulations governing executive department implementation of the act provide in paragraph 4(a) as follows: "A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency. Although oral requests may be honored, a requester may be asked to submit in writing a request for records not customarily made available. Any written request for records covered by these regulations shall be deemed to be a request for records pursuant to the Act whether or not the Act is mentioned in the request . . ." (Emphasis added.)

² The Freedom of Information Act applies to existing records of an agency, and does not require an agency to create records by compiling items from separate files as was done by the Department in the development of the tax delinquent lists. Once a record has been created, however, it becomes subject to disclosure.

³ This policy in favor of discretionary disclosure is embodied in paragraph 2 of the draft regulations. Further, any denial of disclosure of a record must contain a statement of the public interest considerations which establish the need for withholding the record.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
CORPORATION COUNSEL,
January 17, 1978.

MAYOR'S MEMORANDUM 78-12

To: Heads of Departments and Agencies

Originator: Louis F. Robbins, Acting Corporation Counsel, D.C.

Subject: D.C. Freedom of Information Act.

Final regulations governing executive department and subordinate agency implementation of the D.C. "Freedom of Information Act" are scheduled for publication in the D.C. Register on January 27, 1978. Although the law has been in effect for over nine months, there have been relatively few requests for information. This Office expects the frequency of requests to increase greatly in coming weeks. If it has not already been done, each agency head should promptly designate an individual to serve as information officer for that agency. The information officer and other key agency personnel should familiarize themselves with the disclosure law, and with the regulations.

The major features of the law are outlined below:

1. *Disclosure Law, Policy and General Principles.* The District of Columbia Freedom of Information Act prohibits withholding of records except those which fall within one of seven specific exemptions set forth in the legislation. Furthermore, it is the policy of the District Government that records exempted from mandatory disclosure will be made available unless disclosure is prohibited by law or is not in the public interest.

The provisions of the FOIA apply to all requests for records, even if the FOIA is not cited in support of the request. Although oral requests may be honored, an agency may ask an individual to submit in writing a request for records not ordinarily made available.

The FOIA applies to existing records of an agency. The FOIA does not require an agency to compile information which has never been recorded, to create records by compiling selected items from separate files, or to create records to provide such data as ratios, proportions, percentages, and comparisons.

2. *Time Limits.* The FOIA contains stringent time limitations for agency action on a request. Apart from unusual circumstances defined by the FOIA, an agency must respond to a request within ten working days of receipt. Failure to comply with the ten-day time period constitutes a denial of the request and entitles the requester to appeal either to the Mayor or directly to the Superior Court.

3. *Denials.* A denial of an information request must be in writing and contain the specific reasons for the denial, including the particular exemption relied upon, a statement of the appeal rights provided by the act, and the identity of each person responsible for the denial. Because of the policy favoring discretionary disclosure of otherwise exempt material, each denial must also include a statement of the public interest considerations establishing the need for withholding the record.

4. *Fees.* The act permits the imposition of fees not to exceed the actual cost of searching for or making copies of records, but sets a maximum search fee of \$10.00 per request. The regulations include a uniform schedule of common fees. The direct cost of services or ma-

terials other than those listed may be charged if the requester has been notified of the cost before it was incurred. The fee which the government may charge for copies is limited to the mechanical cost of reproductions, *i.e.*, a charge which does not reflect the personnel cost of having the copy made.

5. *Recordkeeping.* The FOIA requires the Mayor to submit to the Council an annual report on the disclosure activities of each agency and of the executive branch as a whole. The regulations thus set forth specific types of information required to be maintained on disclosure activities. Reports on a year's activities are due to the Executive Secretary no later than March 31 of the following year.

It is expected that the disclosure law, once its provisions are more widely known, will have a tremendous impact upon the District Government. No small part of this impact will be fiscal, despite the statement of the Council to the contrary. Agencies must maintain records which will permit the executive branch to document the absorbed cost of compliance with the terms of the legislation.

The Freedom of Information Act places primary responsibility for responding to a request upon the agency or department to which the request is directed. Each agency will have to assume the burden of everyday compliance with its provisions. As the scope of the act is quite broad, and the policy in favor of disclosure so broad, there should be few denials of requests for records. Further, this Office will not defend freedom of information suits, even if the requested record is exempt from mandatory disclosure, unless disclosure would be demonstrably harmful to the agency. Thus, as is set forth in Mayor's Memorandum 77-175, dated October 24, 1977, this Office will become involved in advising an agency with respect to a request only if (a) this Office is advised of the request under a written memorandum signed by the agency head within four days of the agency's receipt of the request; and (b) the memorandum is accompanied by the requested record, refers to the specific exemption that arguably authorizes the withholding, and sets forth in detail the reasons in support of the conclusion to withhold the record.

The District of Columbia Bar has scheduled a continuing education program on the act on February 14, 1978, from 6:30 p.m. to 9:30 p.m. at the Capital Hilton. Agency employees with FOIA responsibility should be encouraged to attend this free program.

Any questions regarding freedom of information matters should be directed to the attention of Assistant Corporation Counsel Joy A. Chapper, Special Assistant to the Corporation Counsel.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
OFFICE OF THE CORPORATION COUNSEL,
Washington, D.C., January 19, 1978.

Memorandum to: Heads of Independent Agencies.

From: Louis P. Robbins, Acting Corporation Counsel, D.C.

Subject: The D.C. Freedom of Information Act.

On March 29, 1977, the D.C. Freedom of Information Act became effective. Unlike the freedom of information provisions contained in Mayor's Order 76-109, this act applies to independent as well as subordinate agencies of the District.

Draft regulations governing implementation of the act were published in the D.C. Register on November 18, 1977, 24 D.C. Reg. 3894. Final regulations are scheduled for publication in the Register on January 27, 1978. These regulations, however, will apply only to subordinate agencies of the executive branch.

Independent agencies are responsible for and must promulgate their own regulations. Those agencies which have not done so should promptly begin the preparation of appropriate regulations. The regulations promulgated for subordinate agencies should be useful as a model.

Assistant Corporation Counsel Joy A. Chapper, Special Assistant to the Corporation Counsel, is available to assist independent agency staff in these matters.

[January 27, 1978]

DISTRICT OF COLUMBIA GOVERNMENT—FREEDOM OF INFORMATION REGULATIONS

On November 18, 1977, a notice of proposed rulemaking, together with a copy of the text of the regulation, was published in the D.C. Register. (23 D.C. R. 3894 *et seq.*) The text of the final regulation appears below, and is effective immediately.

1. PURPOSE AND APPLICATION

This contains the rules and procedures to be followed by all agencies, offices, and departments (hereinafter "agency") of the District of Columbia Government which are subject to the administrative control of the Mayor in implementing the Freedom of Information Act, D.C. Law 1-96, 23 D.C. R. 3744 (1977). For the purpose of these regulations "agency" includes the Office of the Mayor.

Employees may, however, continue to furnish to the public, informally and without compliance with these procedures, information and records which they customarily furnish in the regular performance of their duties prior to enactment of D.C. Law 1-96.

2. STATEMENT OF POLICY

The policy of the District of Columbia Government is one of full and responsible disclosure of its identifiable records consistent with the provisions of D.C. Law 1-96. All records not exempt from disclosure will be made available. Moreover, records exempt from mandatory disclosure will be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest.

3. AGENCY RESPONSIBILITY

The ultimate responsibility for responding to requests for records of an agency is vested in the agency head. Each agency head may designate an individual as the information officer of the agency and may delegate to that individual the authority to grant and deny requests.

4. REQUESTS FOR RECORDS

a. A request for a record of an agency may be made orally or in writing and shall be directed to the particular agency. Although oral requests may be honored, a requester may be asked to submit in writing a request for records not customarily made available. Any written request for records covered by these regulations shall be deemed to be a request for records pursuant to the Act whether or not the Act is mentioned in the request. When a request is made in writing, both the envelope and the letter should clearly indicate that the subject is a freedom of information request.

b. A request should reasonably describe the desired record. Where possible, specific information regarding dates, files, titles, file designation, etc. should be supplied.

c. Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester will be contacted and asked to supply the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.

5. TIME LIMITATIONS

a. Within ten days (excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request, the agency shall determine whether to comply with or to deny the request and shall dispatch such determination to the requester, unless an extension is made under paragraph 5.b.

b. In unusual circumstances as specified in this paragraph, the agency may extend the time for initial determination on a request up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request:

(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) the need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

c. If no determination has been dispatched at the end of the ten-day period, or the extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with paragraph 9. a. When no determination can be dispatched within the applicable time limit, the agency shall nevertheless continue to process the request; on expiration of the time limit the agency shall inform the requester of the reason for the delay, of the date on which a determination may be expected, and of his right to treat the delay as a denial and of the appeal rights provided by the Act. The agency may ask the requester to forego appeal until a determination is made.

6. EXEMPTIONS

a. A requested record shall not be withheld from inspection or copying unless it both (1) comes within one of the classes of records exempted by D.C. Law 1-96; and (2) there is need in the public interest to withhold it.

b. The classes of records authorized to be exempted from disclosure are those which concern matters that are:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(A) interfere with enforcement proceedings,

(B) deprive a person of a right to a fair trial or an impartial adjudication,

(C) constitute an unwarranted invasion of personal privacy,

(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(E) disclose investigative techniques and procedures not generally known outside the government,

(F) endanger the life or physical safety of law enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than a agency in litigation with the agency,

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

c. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of those portions which are exempt under this section.

7. RESPONSES TO REQUESTS

a. When a requested record has been identified and is available, the agency shall notify the requester as to where and when the record is available for inspection or copies will be available. The notification shall also advise the requester of any applicable fees.

b. A response denying a written request for a record shall be in writing and shall include:

- (1) the identity of each person responsible for the denial;
- (2) a reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation of how each exemption applies to the record withheld and a statement of the public interest considerations which establish the need for withholding the record. Where more than one record has been requested and is being withheld, the foregoing information shall be provided for each record withheld; and
- (3) a statement of the appeal rights provided by the Act.

c. If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

8. FEES

a. Charges for services rendered in response to information requests shall be as follows:

- | | |
|--|---------|
| 1. Searching for records, per quarter hour, after 1st hour, by clerical personnel. (Maximum of \$10 for each request)----- | \$1. 50 |
| 2. Nonroutine searching, per quarter hour, by supervisory personnel. (Maximum of \$10 for each request)----- | 3. 00 |
| 3. Copies made by electrostatic copy machines. (Maximum of 2 copies will be provided)----- | . 05 |

b. When a response to a request requires services or materials for which no fee has been established, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

c. Where an extensive number of documents are identified and collected in response to a request and the requester has not indicated in advance his willingness to pay fees as high as are anticipated for copies of the documents, the agency shall inform the requester that the documents are available for inspection and for subsequent copying at the established rate.

d. A charge of \$1.00 shall be made for each certification of true copies of agency records.

e. Search costs, not to exceed ten dollars for each request, may be imposed even if the requested record cannot be located. No fees shall be charged for examination and review by an agency to determine whether a record is subject to disclosure.

f. Fees must be paid in full prior to issuance of requested copies.

g. Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the D.C. Treasurer and mailed or otherwise delivered to the head of the agency. The agency will not assume responsibility for cash which is lost in the mail.

h. A receipt for fees paid will be given only upon request. No refund will be made for services rendered.

i. An agency may waive all or part of any fee when it is deemed to be either in the agency's interest or in the interest of the public.

9. REVIEW OF DENIALS

a. When a request for records has been denied in whole or in part by an agency, the requester may appeal the denial to the Mayor or may seek immediate judicial review of the denial in the Superior Court.

b. An appeal to the Mayor shall be in writing, and shall include a statement of the circumstances, reasons or arguments advanced in support of disclosure, and a copy of any written denial issued under paragraph 6. b.

c. Unless the Mayor otherwise directs, the Executive Secretary shall act on behalf of the Mayor on all appeals under this section, except that in the case of an initial denial by the Executive Secretary, the Mayor or his designee shall act on the appeal.

d. A written determination with respect to an appeal shall be made within ten working days of the filing of the appeal. If the records, or any segregable part thereof, are found to have been improperly withheld, the Executive Secretary, D.C. shall order the agency to make them available. If the agency continues to withhold the records, the requester may seek enforcement of the order in the Superior Court.

e. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it. The denial shall also inform the requester of the right of judicial review.

f. If no determination has been dispatched at the end of the ten-day period, the requester may deem his request denied, and exercise his right to judicial review of the denial.

10. RECORDS MAINTAINED BY AGENCIES

a. Each agency shall make and maintain records pertaining to each request for information, including copies of correspondence. The material shall be filed by individual request.

b. Each agency shall maintain a file, open to the public, which shall contain copies of all letters of denial.

c. Where the release of the identity of the requester or other identifying details related to the request would constitute a clearly unwarranted invasion of personal privacy, the agency shall delete identifying details from the copies of the documents maintained in the public files.

d. Each agency shall also maintain records permitting annual reporting of the following:

(1) total number of requests made to the agency;

(2) the number of requests granted and denied, in whole or in part;

(3) the number of times each exemption was invoked as the basis for non-disclosure;

(4) the names and titles or positions of each person responsible for the denial of records and the number of instances each person was involved in a denial; and

(5) the amount of fees collected, and the amount of fees for duplication and search waived by the agency.

On or before the 31st day of March of each calendar year, each agency shall compile and submit to the Executive Secretary its report on the above and on other matters relating to agency compliance with the terms of the Act.

e. With respect to appeals under paragraph 9, the Executive Secretary shall maintain records reflecting the number of appeals taken, the results of the appeals, and the number of times each exemption was invoked as the basis for non-disclosure.

11. OVERSIGHT

On or before the 30th day of June of each calendar year, the Executive Secretary, D.C. shall compile and submit to the Council of the District of Columbia, on behalf of the Mayor, a report covering the disclosure activities of each agency and of the Executive as a whole during the preceding calendar year.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
ADMINISTRATIVE ISSUANCE SYSTEM,
April 12, 1978.

MAYOR'S ORDER 78-74

Subject: Freedom of Information Act (FOIA) Disclosure Officers.
Originating Agency: Office of Budget and Management Systems.

By virtue of the authority vested in me by Section 422(11) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (D.C. Code Section 1-162(11) (Supp. IV 1977)), it is hereby ordered that:

Each Department or Agency head shall forward to the Executive Secretary, D.C., Office of the Secretariat, the name, position title, address, and telephone number of the individual(s) designated as the agency Freedom of Information Act (FOIA) Disclosure Officer(s) pursuant to section 3 of the Executive Freedom of Information Regulations, 24, D. C. Reg. 6211 (1978).

This Order shall be effective immediately.

WALTER E. WASHINGTON, *Mayor.*

VI. POST-ENACTMENT LEGAL ANALYSIS

D.C. Freedom of Information Act

By Larry P. Ellsworth

If you operated a business, would you continue to employ, and give yearly raises to, a staff that allowed you only selective access to the records of that business? Would you continue to deposit money in a bank that refused to let you see your own bank statement? Until recently, District of Columbia taxpayers tolerated just such a situation in their local government. Before March 29, 1977, when the D.C. Freedom of Information Act (FOIA) took effect, citizens of the District had no statutorily enforceable right of access to records of the District government.

D.C. Law 1-96, the D.C. FOIA, provides that any person has a right to inspect and, if he or she wishes, to make copies of any record in the possession of any executive agency of the District of Columbia Government, subject to seven specific exceptions. The Act is patterned after the Federal Freedom of Information Act, 5 U.S.C. §552, as amended, and replaces a weaker Mayor's Order No. 76-109 (May 4, 1976), which few people within or without the D.C. government knew existed. It covers records of the Mayor, the Department of Human Resources, the Metropolitan Police Department, the School Board and the Board of Zoning Adjustment, to name a few. It does not cover records of the City Council or the Judiciary.

The D.C. FOIA makes accessible much information that is essential to the electorate in determining whether District officials are acting in the best interests of the District's residents. For example, a person may want to determine whether certain campaign records have been filed as required by law; what action was taken by the school board on a proposed curriculum change; the names of doctors, lawyers, security guards, or others licensed by the city; who received a particular contract to do work for the city; or what decision was made on an application for a zoning change.

Racial, ethnic, women's, and similar groups may seek information on affirmative action plans to combat employment discrimination. Labor unions may seek data on the safety conditions where their members work. Environmental groups may use the Act in an effort to learn of projected pollution

control programs or proposed new highways. A welfare rights group may obtain DHR's guidelines on eligibility for food stamps or aid to families with dependent children. A consumer organization may seek consumer complaint letters or inspection reports on restaurants, nursing homes or apartment buildings.

The Act can also assist individuals who need a document for personal reasons. It may be a birth, marriage, or death certificate, a copy of a past year's tax return, a personnel file, a parole record, or an investigation file kept by the police department. The D.C. FOIA provides a simple procedure for seeking access to all of these records, which is not dependent either on who one knows or on one's need to know.

How to Make a Request to an Agency

To make a request for a record under the D.C. FOIA, a requester need only "reasonably describ[e]" the records he or she seeks in a letter to the agency that retains these records, or to the Mayor's office if the records are retained there (§202(c)). While a requester should give as clear a description as possible of the records sought, the D.C. FOIA does not require that a document's name, title or file number be furnished. All that is required is a reasonably sufficient description, such that a government employee who is familiar with the agency's files can locate the records sought. For example, it is sufficient to request access to the most recent sanitation inspection report compiled by the D.C. Consumer Health Services on a particular restaurant, identified by name and address. Likewise, if someone wants to learn the scope of a particular District program, he or she might request the agency in charge of it to grant access to those documents that establish and describe the purposes of that program. A request must always be for documentary materials which contain the information sought, rather than for the information itself, because the D.C. FOIA applies only to existing records, and does not require an agency to compile information which has never been recorded.

While not required, it is advisable to specifically state that the request is made pursuant to the D.C. Freedom of Information Act (D.C. Law 1-96). It may also help to write "Freedom of Information Request" (or "Appeal") on the envelope and on the top of the letter. With two exceptions, noted below, a requester does not have to state the reasons for the request, and government employees have no right to ask for those reasons.

It is generally irrelevant whether the documents are also available elsewhere.

Within ten working days of receipt of the request (i.e., days other than Saturdays, Sundays, and legal public holidays), an agency is required either to make the requested records available or to notify the requester that it has determined not to make the records available and to state the reasons for that determination, including the specific disclosure exception which it contends is applicable (§§202(c) and 203(a)). The agency must also explain the requester's right to appeal (§203(a)(3)). In certain "unusual circumstances," which are specifically enumerated in the Act, an agency may upon notice to the requester extend the time for responding, but no extension or extensions may exceed ten additional working days (§202(d)), for a total of twenty working days.

Appeal to the Mayor

If an initial request to an agency or the Mayor's office is denied, it is necessary to appeal to the Mayor (§207(a)). If there is no decision on the initial request within the time specified by the Act, then the requester may either appeal to the Mayor or go directly to court (§202(e)). An administrative appeal is generally preferable. The Mayor must make a final determination within ten working days of receipt of the appeal on whether the requested records may properly be withheld (§207(a)).

Fees and Fee Waivers

The fees charged by the Mayor or agency may not exceed the actual cost of searching for and making copies of records, if the requester seeks copies (§202(b)). Moreover, in no instance may the search charge exceed \$10 for a request made at one time to one agency, no matter how many records are involved (§202(b)). No fees may be charged for examination and review to determine whether requested records will be disclosed (§202(b)). Finally, the Mayor or agency may waive or reduce fees whenever furnishing the information can be considered as primarily benefiting the general public (§202(b)). Thus, when seeking a waiver, a requester may wish to explain how the information will be used.

Going to Court

If the Mayor denies access or fails to decide within the time limits, or if for any other reason the records are not immediately made available at the close of the appeal consideration period, the requester may file suit in the Superior Court of the District of Columbia to enjoin the Mayor or agency from withholding the records sought (§207(a) and (b)). The burden of proof is upon the Mayor or agency to sustain the withholding decision, and the Superior Court must determine the matter de novo (§207(b)).



Larry P. Ellsworth is Counsel to the Senate Select Committee on Ethics-Korean Inquiry, and Chairperson of the D.C. Bar's Division on Administrative Law and Practice. He was Chairperson of the Committee on Access to Government Information when it presented its views on the bill that became the D.C. Freedom of Information Act.



If the requester prevails in whole or in part in the suit, the Court may award reasonable attorneys' fees and other litigation costs (§207(c)).

Exceptions to the Disclosure Requirements

Section 204 of the D.C. FOIA enumerates seven categories of information which the Mayor or an agency "may" withhold from the public. These exemptions permit an agency to withhold exempt material; they do not prevent an agency from publicly releasing exempt material when the public interest in disclosure outweighs the harm that might result from disclosure. For example, an agency might properly determine that in order to protect the safety of a large number of workers, it must disclose information which is technically a trade secret.

But, an agency has no power to withhold a record that does not fall within one of the seven exemptions, and those exemptions are to be construed narrowly. Finally, any portion must be provided to the requester after deletions of exempt material. Six of the seven exemptions are closely patterned after exemptions in the Federal FOIA (5 U.S.C. §§552(b)(1), (3)-(7)). The seventh, dealing with examination questions is a new exemption suggested by the District of Columbia Bar. The Federal Act also contains three narrow exemptions, dealing with personnel rules, banking information, and oil, gas and other well data, which were not included in the D.C. FOIA (5 U.S.C. §§522(b)(2), (8) and (9)). An explanation follows of the seven exemptions contained in the D.C. FOIA.

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained.

This exemption recognizes that, while it is necessary for the government to collect relevant data about businesses which it regulates, certain data whose value would be lost if disclosed to competitors should generally be held in confidence. This exemption also recognizes, however, that not all business data deserves protection. Thus, an agency may withhold information only if it is either a trade secret or commercial or financial information. Moreover, this exemption applies only to information submitted to the government; government-prepared documents based on government-created information are never exempt under this section.

In addition, an agency must prove that disclosure "would" cause substantial competitive injury to the submitter. In adopting this standard, the City Council accepted in part a test enunciated by the District of Columbia Circuit Court of Appeals under the Federal FOIA in *National Parks and Conservation Association v. Morton*, 498 F.2d

765, 770 (D.C. Cir. 1974). The *National Parks* case speaks in terms of "likely" competitive injury, which the City Council has apparently interpreted to mean "more likely than not," or in the words of exemption 1, disclosures that "would" result in competitive injury. Moreover, the City Council rejected a second prong of the *National Parks* test—likely impairment of the government's ability to obtain information in the future—possibly because impairment can generally be expected to occur only in cases where competitive injury would be present.

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

Co-equal with the public's right to know is an individual's right to privacy, which enjoys some constitutional protection. However, not all information that may be labeled "personal" should be withheld from the public. Consequently, this exemption involves a balancing of the public interests to be served by disclosure against the degree of invasion of an individual's privacy that would result from disclosure. Only if the balance weighs "clearly" toward the side of privacy does the exemption apply. This is the one exemption for which the reason for the request may be relevant. In any event, whenever a request involves privacy interests, the requester should include a brief explanation of the public benefits that would result from disclosure.

(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

(A) interfere with enforcement proceedings,

(B) deprive a person of a right to a fair trial or an impartial adjudication,

(C) constitute an unwarranted invasion of personal privacy,

(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source.

(E) disclose investigative techniques and procedures not generally known outside the government,

(F) endanger the life or physical safety of law enforcement personnel.

Exemption 3 applies only to records that are "investigatory" and were "compiled for law enforcement purposes," whether civil or criminal, judicial or administrative. Thus, annual inspection reports may be investigatory, but they are not exempt because they were not compiled for use in any particular enforcement proceeding. Further, even investigatory records which were compiled for law enforcement purposes cannot be withheld unless an agency can prove that disclosure would endanger people, invade an individual's privacy, interfere with due process rights, or seriously hamper law en-

forcement efforts. The one difference in wording between this exemption and its counterpart in the Federal FOIA is an addition to subpart (E), the D.C. FOIA clarifies the intent of that subpart by stating that it protects only those "investigatory techniques and procedures" which are "not generally known outside the government."

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

This exemption, which was taken verbatim from the Federal FOIA, recognizes the common law discovery privileges for certain intra-executive recommendations, attorney-client communications, and attorney work product. In general, two somewhat overlapping dividing lines may be drawn between what must be disclosed and what may be withheld under this exemption. First, factual portions of documents generally must be disclosed, but advice on legal and policy matters may be withheld. Second, preliminary drafts and unfinished reports may be withheld, but once finished, they generally must be disclosed. To illustrate, a memorandum from a staff member to a supervisor recommending that a particular policy be established would be exempt, except for factual portions. But factual reports or expert analyses of facts generally are not exempt.

The breadth of this exemption is substantially reduced by the specific disclosure requirements of Section 206, which include certain final opinions, instructions to staff, statements of policy, opinions on the law, and minutes of meetings. Moreover, this is the exemption most often waived by agencies because the actual harm caused by disclosure of exempt material is seldom significant.

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon.

This exemption permits the Office of Licenses and Permits, the University of the District of Columbia, and other District agencies to withhold test questions and answers until they have been administered as part of an examination. In this way these agencies may maintain the fairness and validity of the results. However, once administered, the examination and any model, typical or actual answers must be made available for public inspection and copying, whether or not the questions may be used again in future examinations. The names of test-takers may generally be deleted pursuant to the personal privacy exemption, except where it is the taker who requests his or her own examination.

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute—

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types

District Lawyer

of matters to be withheld.

This exemption covers documents and information specifically exempted from disclosure by other laws. Examples are certain juvenile court records and income tax returns. 16 D.C. Code §2334; 47 D.C. Code §1564c. A statute which provided that an agency could keep "any information" confidential when to do so was in the "public interest" would not authorize withholding under this exemption because it neither sufficiently identifies the records nor particularizes the criteria for selecting the records to be withheld.

(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

This exemption, which has very little relevance to the District government, exempts documents stamped Top Secret, or Confidential by a Federal agency when the documents meet the criteria of Presidential Executive Order 11652. However, courts will not necessarily take an official's word on the propriety of a classification, and may look at the information to determine whether it is all properly classified.

Specific Disclosure Provisions

Sections 205 and 206 require disclosure of certain types of information without regard to the exemptions of Section 204. Section 205 requires that the vote of each member of a multi-member agency be recorded and disclosed on an individual basis. Thus, the use of such phrases as "a majority voted for X," which do not reveal specifically which members voted for a given position, would be inadequate.

The introductory paragraph to Section 206 is internally contradictory. On the one hand, it says that it does not limit the meaning of any other section of the Act, presumably including the exceptions from the disclosure requirements. On the other hand, it proclaims that the enunciated "categories of information are specifically made public information." The Council's "Report of the Committee on the Judiciary and Criminal Law," however, makes no mention of the opening qualifying phrase, but instead states without qualification that "Section 206 stipulates specific categories of information which are public and not subject to withholding" (p. 14, emphasis in original). Read in context, this appears to have been the Council's intention.

The information required to be disclosed, regardless of whether an exemption would otherwise apply, includes: (1) an employee's name, position and salary; (2) administrative manuals and instructions to staff; (3) final opinions; (4) statements and interpretations of policy or law; (5) correspondence stating an opinion as to the rights of the government, the public or private individuals; (6) information concerning receipt or expenditure of public funds; and (7) the

minutes of all agency proceedings.

Deficiencies in the Act

1. Perhaps the primary deficiency of the D.C. FOIA is the one it shares with the Federal FOIA: the D.C. legislative branch has chosen to exclude itself and the judiciary from the District's most important open government requirement. The public's need to know how its elected Council members and their appointed staffs are performing their jobs is at least as great as its need to know how its elected Mayor and appointed executive officials are performing theirs. At least eleven states have enacted freedom of information statutes that apply to both the executive and legislative branches of government.

Similarly, there is no readily apparent reason why a court's disbursements of public money and internal operating procedures on such matters as assignments and re-assignments of cases, judicial disqualifications, and sentencing should not be made available to the public. Although special exemptions may have to be tailored to the special problems presented by the judiciary, this is no reason completely to exempt the judiciary from coverage. In varying degrees, at least three states do include the judiciary under their public records laws. As the Commission on Revision of the Federal Court Appellate System, chaired by then Senator Roman L. Hruska, recently stated when suggesting a notice and comment rulemaking procedure for the judiciary:

Finally, publication of a court's internal procedures can help to maintain public confidence in the soundness and integrity by which . . . appellate judges reach their decisions. . . . Open discussion of the various differentiated procedures and the way they operate should provide assurance that the decision-making process is a fair one; that judges remain in control of judicial decisions; that no type of case is given "second class status"; in short, that the judicial function is being conscientiously and independently exercised by those who were appointed to exercise it, and that neither efficiency nor fairness has been sacrificed. [Structure and Internal Procedures: Recommendations for Change 45 (1975)].

(2) A more technical deficiency in the Act grew out of the D.C. Bar's recommendation that each "public body,"—whether executive, legislative or judicial—be covered by the Act. Thus, Section 207, which was taken in part from the Bar's draft, speaks of denials of access by a "public body," without defining the term. In context, courts will undoubtedly read "public body" to mean "the Mayor or an agency."

(3) While the D.C. FOIA requires that "secret law," such as final opinions, instructions to staff and other legal and policy determinations be made available upon request, there is no indexing requirement in the Act to insure that the public has ready knowledge of the existence of decisions affecting the public.

(4) The U.S. Congress in 1974 amended the Federal FOIA to include a personal accountability section providing for civil service sanctions against individual employees for egregious violations of that Act. Even though the Mayor's representative who publicly testified on this point favored such a provision, which the Federal experience indicates is essential to an effective law, the City Council failed to include any personal accountability provision in the final Act.

(5) Another essential provision of the Federal Act, which was not included in the D.C. Act, is the requirement that FOIA cases be expedited in the courts. Without this provision, the information may well be useless by the time any litigation is finally concluded. Untimely information is often of no more use than no information.

(6) The D.C. FOIA sets a maximum search fee of \$10 on a request made at any one time, even though thousands of separate documents may be requested. While the \$10 maximum will in the normal case be reasonable, and will protect requesters from being penalized because of inefficient agency records systems, there is a great potential in the exceptional case of unfairly requiring the District's taxpayers to bear the expense of large requests, even though the request may have been made solely for the commercial benefit of the requester.

Conclusion

The D.C. FOIA for the first time gives the residents of the District of Columbia an enforceable right of access to the records of their local government. While this statute suffers several serious deficiencies when compared to the Federal FOIA, it also improves upon the Federal model in some respects: the D.C. FOIA exemptions are more specific and the D.C. Act explicitly states that certain records are never exempt.

The purpose of the D.C. FOIA was stated in the Act's very first section:

Generally, the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

This ideal can only become a reality if both citizen-users and District employees become fully aware of their rights and responsibilities under this new legislation. In an effort to assist in this educational effort, the Division on Administrative Law and Practice will hold a free introductory course on the D.C. FOIA on Tuesday, February 14, 1978, from 7 p.m. to 10 p.m.

We hope to see you there. ■



TEXTS OF STATE STATUTES

Code of ALABAMA

Freedom of Information (Open Records)

Title 41

Right to Inspect Records

§ 145. (2695) **Every citizen entitled to inspect and copy public records.**—Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.

§ 146. (5030) (7439) (5133) (3949) (4158) (772) (652) **Refusal of public officer to permit examination of records.**—Any public officer, having charge of any book or record, who shall refuse to allow any person to examine such record free of charge, must, on conviction, be fined not less than fifty dollars.

§ 147. (2696) **Public officers bound to give copies.**—Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

ALASKA STATUTES

Freedom of Information (Open Records)

Title 9

Right to Inspect Records

Sec. 09.25.100. Disposition of tax information. Information in the possession of the department of revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential, except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information which may assist in the collection of delinquent taxes. (§ 3.21 ch 101 SLA 1962)

Sec. 09.25.110. Inspection and copies of public records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record. (§ 3.22 ch 101 SLA 1962)

Sec. 09.25.120. Inspection and copying of public records. Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50.010—18.50.380; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public writings and records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public writings and records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public writings and records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the recorders and their employees. (§ 3.23 ch 101 SLA 1962)

ARIZONA Revised Statutes Annotated
1976-1977 Cumulative Pocket Part
Freedom of Information (Open Records)
Volume 12 - Title 39
Right to Inspect Records

§ 39-121.01. Copies; printouts or photographs of public records

In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.

2. "Public body" means the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by funds from the state or any political subdivision thereof, or expending funds provided by the state or any political subdivision thereof.

3. All officers and public bodies shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by funds from the state or any political subdivision thereof.

4. Each public body shall be responsible for the preservation, maintenance and care of that body's public records and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to §§ 41-1344, 41-1347 and 41-1351.

5. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours. The custodian of such records shall furnish such copies, printouts or photographs and may charge a reasonable fee if the facilities are available, subject to the provisions of § 39-122. The fee shall not exceed the commercial rate for like service except as otherwise provided by statute.

6. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian thereof and shall be subject to the supervision of such custodian. Added Laws 1975, Ch. 147, § 1. As amended Laws 1976, Ch. 104, § 17.

§ 39-121.02. Action upon denial of access; expenses and attorney fees; damages

A. Any person who has requested to examine or copy public records pursuant to the provisions of this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.

B. If the court determines that a person was wrongfully denied access to or the right to copy a public record and if the court finds that the custodian of such public record acted in bad faith, or in an arbitrary or capricious manner, the superior court may award to the petitioner legal costs, including reasonable attorney fees, as determined by the court.

C. Any person who is wrongfully denied access to public records pursuant to the provisions of this article shall have a cause of action against the officer or public body for any damages resulting therefrom. Added Laws 1975, Ch. 147, § 1.

ARKANSAS Statutes 1947-1968 Replacement
1977 Cumulative Pocket Supplement

Freedom of Information (Open Records)

Volume 2A

Title 12

Right to Inspect Records

12-2801. Title of act.—This Act [§§ 12-2801—12-2807] shall be known and cited as the "Freedom of Information Act" of 1967. [Acts 1967, No. 93, § 1, p. 208.]

12-2802. Declaration of public policy.—It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Toward this end, this act [§§ 12-2801—12-2807] is adopted, making it possible for them, or their representatives, to learn and to report fully the activities of their public officials. [Acts 1967, No. 93, § 2, p. 208.]

12-2803. Definitions.—"Public records" are writings, recorded sounds, films, tapes, or data compilations in any form (a) required by law to be kept, or (b) otherwise kept and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds.

All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records. Provided, that compilations, lists, or other aggregations of "personal information," determined to be confidential by the State Information Practices Board pursuant to its duties set forth in sub-section [sub-sub-section] 2 of subsection (k) of Section 4 of Act 730 of 1975, being Arkansas Stat. Ann. 16-801, et seq., shall not be considered to be "public records" within the terms of this Act [§§ 12-2801—12-2807] and shall not be supplied to private individuals or organizations.

"Public meetings" are the meetings of any bureau, commission or agency of the State, or any political subdivision of the State, including municipalities and counties, boards of education, and all other boards, bureaus, commissions or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds, or expending public funds. [Acts 1967, No. 93, § 3, p. 208; 1977, No. 652, § 1, p. —.]

12-2804. Examination and copying of public records.—Except as otherwise specifically provided herein, by laws now in effect, or laws hereinafter specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records. It is the specific intent of this Section that State income tax returns; medical, scholastic, and adoption records; the site files and records maintained by the Arkansas Historic Preservation Program and the Arkansas Archeological Survey; grand jury minutes; unpublished drafts of judicial or quasi-judicial opinions and decisions; undisclosed investigations by law enforcement agencies of suspected criminal activity; unpublished memoranda, working papers, and correspondence of the Governor, Legislators, Supreme Court Justices, and the Attorney General; documents which are protected from disclosure by order or rule of court; files which, if disclosed, would give advantage to competitors or bidders; and other similar records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this Act [§§ 12-2801—12-2807].

Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy such records shall not be denied to any citizen.

If a public record is in active use or in storage and, therefore, not available, at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) days, at which time the record will be available for the exercise of the right given by this Act. [Acts 1967, No. 93, § 4, p. 208; 1977, No. 652, § 2, p. —.]

12-2806. Enforcement.—Any citizen denied the rights granted to him by this Act [§§ 12-2801—12-2807] may appeal immediately from such denial to the Pulaski Circuit Court, or to the Circuit Court of the residence of the aggrieved party, if an agency of the State is involved, or to any of the Circuit Courts of the appropriate judicial districts when an agency of a county, municipality, township or school district, or a private organization supported by or expending public funds is involved. Upon written application of the person denied the rights provided for in this Act, or any interested party, it shall be mandatory upon the Circuit Court having jurisdiction, to fix and assess a day the petition is to be heard within seven [7] days of the date of the application of the petitioner, and to hear and determine the case. Those who refuse to comply with the orders of the court shall be found guilty of contempt of court. [Acts 1967, No. 93, § 6, p. 208.]

12-2807. Penalty.—Any person who wilfully and knowingly violates any of the provisions of this Act [§§ 12-2801—12-2807] shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$200, or 30 days in jail, or both. [Acts 1967, No. 93, § 7, p. 208.]

West's Annotated CALIFORNIA Codes
1976 Cumulative Supplement

Freedom of Information (Open Records)
Government Code
Right to Inspect Records

§ 6250. Legislative findings and declarations

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every * * * person in this state.

(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1970, c. 575, p. 1150, § 1.)

§ 6251. Short title

This chapter shall be known and may be cited as the California Public Records Act.

(Added by Stats.1968, c. 1473, p. 2946, § 39.)

§ 6252. Definitions

As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.

(c) "Person" includes any natural person, corporation, partnership, firm, or association.

(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of or maintained by the Governor's office means any writing prepared on or after January 6, 1975.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1970, c. 575, p. 1151, § 2; Stats.1975, c. 1246, p. ---, § 2.)

§ 6253. Public records open to inspection; time; guidelines and regulations governing procedure

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records * * *. A copy of these guidelines shall be posted in a conspicuous public place at the offices of such bodies * * *, and a copy of such guidelines shall * * * be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
 Department of Consumer Affairs
 Department of Transportation
 Department of Real Estate
 Department of Corrections
 * * * Department of the Youth Authority
 Department of Justice
 Department of Insurance
 Department of Corporations
 Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Department of Health
 * * * Employment Development Department
 Department of Benefit Payments
 Public Employees' Retirement System
 Teachers' Retirement * * * Board
 Department of Industrial Relations
 Department of General Services
 Department of Veterans Affairs
 Public Utilities Commission
 California * * * Coastal Zone Conservation Commission
 All regional * * * coastal zone conservation commissions
State Water Quality Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District.

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make such records accessible to the public.

(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1973, c. 664, p. 1215, § 1; Stats.1974, c. 544, p. 1249, § 7; Stats.1975, c. 957, p. ---, § 6.)

§ 6253.5 Initiative, referendum and recall petitions deemed not public records

Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions and all memoranda prepared by the county clerks in the examination of such petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving such petitions or who are responsible for the preparation of such memoranda.

(Added by Stats. 1974, c. 1410, p. 3106, § 10; Stats. 1974, c. 1445, p. 3155, § 9. Amended by Stats. 1975, c. 678, p. —, § 26.)

The two 1974 additions were identical in text, except for the comma between "initiative" and "referendum" in c. 1410.

Library References
Records § 14.
C.J.S. Records § 35 et seq.

§ 6254. Exemption of particular records

Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled;

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies;

(2) Examination, operating, or condition reports prepared by, or behalf of, or for the use of any state agency referred to in subdivision (1);

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1); or

(4) Information received in confidence by any state agency referred to in subdivision (1).

(e) Geological and geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person;

Asterisks * * * indicate deletions by amendment

(f) Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision;

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;

(j) Library and museum materials made or acquired and presented solely for reference or exhibition purposes;

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege;

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the * * * Governor's legal affairs secretary, provided * * * public records shall not be transferred to the custody of the Governor's * * * legal affairs secretary to evade the disclosure provisions of this chapter;

(m) In the custody * * * or maintained by the Legislative Counsel;

(n) Statements of personal worth or personal financial data requiring by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for; and

Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1970, c. 1231, p. 2157, § 11.5; Stats.1970, c. 1295, p. 2396, § 1.5; Stats.1975, c. 1231, p. —, § 1; Stats.1975, c. 1246, p. —, § 3.)

§ 6254.7 Air pollution data; public records; notices and orders to building owners; trade secrets

(a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or any other state or local agency or district requires any applicant to provide before such applicant builds, erects, alters, replaces, operates, sells, rents, or uses such article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to such notices and orders, are public records.

(d) Except as otherwise provided in subdivision (e), trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

(Added by Stats.1970, c. 1295, p. 2397, § 2. Amended by Stats.1971, c. 1601, p. 3448, § 1; Stats.1972, c. 400, p. 722, § 1; Stats.1973, c. 186, p. 488, § 1, urgency, eff. July 9, 1973.)

§ 6254.8 Employment contracts between state or local agency and public official or employee; public record

Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

(Added by Stats.1974, c. 1198, p. 2588, § 1.)

Library references

Records § 14.

C.J.S. Records § 35 et seq.

Asterisks * * * indicate deletions by amendment

§ 6255. Justification for withholding of records

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

(Added by Stats.1968, c. 1473, p. 2947, § 39.)

§ 6256. Copies of records

Any person may receive a copy of any identifiable public record or * * * copy * * * thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(Added by Stats.1968, c. 1473, p. 2947, § 39. Amended by Stats.1970, c. 575, p. 1151, § 3.)

§ 6257. Request for copy; fee

A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, provided such fee shall not exceed ten cents (\$0.10) per page or the prescribed statutory fee, where applicable.

(Added by Stats.1968, c. 1473, p. 2947, § 39. Amended by Stats.1975, c. 1246, p. —, § 8.)

§ 6258. Proceedings to enforce right to inspect or to receive copy of record

Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

(Added by Stats.1968, c. 1473, p. 2048, § 39. Amended by Stats.1970, c. 575, p. 1151, § 4.)

§ 6259. Order of court; contempt; court costs and attorney fees

Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. Such costs and fees shall be paid

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by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

(Added by Stats.1968, c. 1473, p. 2948, § 39. Amended by Stats.1975, c. 1246, p. —, § 9.)

§ 6260. Effect of chapter on prior rights and proceedings

The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state.

(Added by Stats.1968, c. 1473, p. 2048, § 39.)

§ 6261. Itemized statement of total expenditures and disbursement of any agency

Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

(Added by Stats.1975, c. 1246, p. —, § 3.5.)

COLORADO Revised Statutes 1973

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24-72-201. Legislative declaration. It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

Source: L. 68, p. 201, § 1; C.R.S. 1963, § 113-2-1.

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(2) "Official custodian" means and includes any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(3) "Person" means and includes any natural person, corporation, partnership, firm, or association.

(4) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person; except that if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, and special district within this state.

(6) "Public records" means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

Source: L. 68, p. 201, § 2; C.R.S. 1963, § 113-2-2.

24-72-203. Public records open to inspection. (1) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification he shall state in detail to the best of his knowledge and belief the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the public records requested are in the custody and control of the

person to whom application is made but are in active use or in storage and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the records will be available for inspection.

Source: L. 68, p. 202, § 3; C.R.S. 1963, § 113-2-3.

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal.

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any investigatory files compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution; and

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner thereof who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which he has obtained relative to the proposed acquisition of the property.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(I) Medical, psychological, sociological, and scholastic achievement data on individual persons, exclusive of coroners' autopsy reports; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II) Personnel files, except applications and performance ratings; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise his work;

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions; and

(VI) Addresses and telephone numbers of students in any public elementary or secondary school.

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student to any prospective employer of such student, nor shall anything in this subsection (3) prohibit the custodian of records from making available for inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his parent or guardian shall not be required therefor. No state educational institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school, including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his parent or guardian shall not be required therefor.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the inspection of such record. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

(6) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. Hearing on such application shall be held at the earliest practical time. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. In such action the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard.

Source: L. 68, p. 202, § 4; L. 69, pp. 925, 926, § § 1, 1; C.R.S. 1963, § 113-2-4.

24-72-205. Copies, print-outs, or photographs of public records. (1) In all cases in which a person has the right to inspect any public record, he may request that he be furnished copies, print-outs, or photographs of such record. The custodian may furnish such copies, print-outs, or photographs for a reasonable fee, to be set by the official custodian, not to exceed one dollar and twenty-five cents per page unless actual costs exceed that amount. Where fees for certified copies or other copies, print-outs, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(2) If the custodian does not have facilities for making copies, print-outs, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, print-outs, or photographs. The copies, print-outs, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, print-out, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, print-outs, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing-out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

Source: L. 68, p. 204, § 5; C.R.S. 1963, § 113-2-5.

24-72-206. Violation - penalty. Any person who willfully and knowingly violates the provisions of this part 2 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Source: L. 68, p. 204, § 6; C.R.S. 1963, § 113-2-6.

30-10-101. Offices - inspection of records - failure to comply - penalty.

(1) Every sheriff, county clerk, county treasurer, and clerks of the district and county courts shall keep their respective offices at the county seat of the county and in the office provided by the county, if any such has been provided; or, if there is none provided, then at such place as the board of county commissioners shall direct. All books and papers required to be in their offices shall be open to the examination of any person, but no person, except parties in interest, or their attorneys, shall have the right to examine pleadings or other papers filed in any cause pending in such court.

(2) Any person or corporation and their employees engaged in making abstracts or abstract books shall have the right, during usual business hours and subject to such rules and regulations as the officer having the custody of such records may prescribe, to inspect and make memoranda, copies, or photographs of the contents of all such books and papers for the purpose of their business; but any such officer may make reasonable and general regulations concerning the inspection of such books and papers by the public. If, for the purpose of making such photographs, it becomes necessary to remove such records from the room where they are usually kept to some other room in the courthouse where such photographic apparatus may be installed for such purpose, the county clerk, in his discretion, may charge to the person or corporation making such photographic reproductions, a fee of one dollar per hour for the service of the deputy who has charge of such records while they are being so photographed; but such fees shall not be charged to one person or corporation unless the same fee is likewise charged to every person or corporation photographing such records.

(3) If any person or officer refuses or neglects to comply with the provisions of this section, he shall forfeit for each day he so refuses or neglects the sum of five dollars, to be collected by civil action, in the name of the people of the state of Colorado, and pay it into the school fund; but this shall not interfere with or take away any right of action for damages by any person injured by such neglect or refusal.

Source: G. L. § 554; L. 1885, p. 157, § 1; R. S. 08, § 1352; L. 13, p. 227, § 1; L. 19, p. 368, § 1; C. L. § 8829; CSA, C. 45, § 176; CRS 53, § 35-1-1; C.R.S. 1963, § 35-1-1.

CONNECTICUT General Statutes Annotated
1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Volume 2
Right to Inspect Records

[§ 1-18a. (P.A. 75-342, § 1) Definitions]

As used in this act and in chapter 32, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(a) "Public agency" or "agency" means any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, and also includes any judicial office, official or body of the court of common pleas, probate court and juvenile court but only in respect to its or their administrative functions.

(b) "Meeting" means any hearing or other proceeding of a public agency and any convening or assembly of a quorum of a multi-member public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power, but shall not include any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business. "Meeting" shall not include strategy or negotiations with respect to collective bargaining nor a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency. "Caucus" means a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision.

(c) "Person" means natural person, partnership, corporation, association or society.

(d) "Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be hand-written, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

(e) "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes:

(1) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting;

(2) strategy and negotiations with respect to pending claims and litigation;

(3) matters concerning security strategy or the deployment of security personnel, or devices affecting public security;

(4) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and

(5) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-19.

(1975, P.A. 75-342, § 1.)

§ 1-19. Access to public records

(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect or copy such records at such reasonable time as may be determined by the custodian thereof. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of any political subdivision or the secretary of the state, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy or such other person designated or empowered by law to so act, of such agency shall be competent evidence in any court of this state of the facts contained therein.

Each such agency shall make, keep and maintain a record of the proceedings of its meetings.

(b) Nothing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall be construed to require disclosure of (1) preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure; personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy; (2) records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known, (B) information to be used in a prospective law enforcement action if prejudicial to such action, (C) investigatory techniques not otherwise known to the general public, or (D) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes; (3) records pertaining to pending claims and litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled; (4) trade secrets, which for purposes of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are recognized by law as confidential, and commercial or financial information given in confidence, not required by law and obtained from the public; (5) test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations; (6) the contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision; (7) statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate or permit applied for; (8) records, reports and statements of strategy or negotiations with respect to collective bargaining; (9) records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship.

(c) The records referred to in subsection (b) shall not be deemed public records for the purposes of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, provided disclosure pursuant to the provisions of said sections shall be required of all records of investigation conducted with respect to any tenement house, lodging house or boarding house as defined in chapter 352, or any nursing home, home for the aged or rest home, as defined in chapter 333, by any municipal building department or housing code inspection department, any local or district health department, or any other department charged with the enforcement of ordinances or laws regulating the erection, construction, alteration, maintenance, sanitation, ventilation or occupancy of such buildings.

(1971, P.A. 193; 1975, P.A. 75-342, § 2, eff. Oct. 1, 1975; 1976, P.A. 76-294.)

[§ 1-19a. (P.A. 75-342, § 4) Computer storage system; printouts]

Any public agency which maintains its records in a computer storage system shall provide a printout of any data properly identified.
(1975, P.A. 75-342, § 4.)

[§ 1-19b. (P.A. 75-342, § 3) Construction of act]

Nothing in this act¹ shall be: (1) Construed as preventing any public agency from opening its records concerning the administration of such agency to public inspection, or (2) construed as authorizing the withholding of information in personnel files, birth records or of confidential tax data from the individual who is the subject of such records, or (3) be deemed in any manner to affect the status of judicial records as they existed prior to Oct. 1, 1975, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state.
(1975, P.A. 75-342, § 3.)

§ 1-20a. Public employment contracts as public record

Any contract of employment to which the state or a political subdivision of the state is a party shall be deemed to be a public record for the purposes of sections 1-10 and 1-20.
(1973, P.A. 73-271.)

DELAWARE Code Annotated
1977 Cumulative Supplement

Freedom of Information (Open Records)
Article 29
Right to Inspect Records

§ 6411. Organization regulations; rules of procedure.

For the benefit of the public, each agency shall adopt the following regulations:

- (1) A general description of its organization, its methods of operations and the manner, including addresses and telephone numbers, whereby the public may obtain information and otherwise deal with the agency; and
- (2) A statement of the nature and requirements of all rules of practice and procedure used by the agency to exercise its statutory authority in compliance with this chapter. (60 Del. Laws, c. 585, § 1.)

§ 6412. Public information.

(a) Each agency shall make available promptly to the public upon request, for inspection, originals or legible copies of the following:

- (1) Its regulations, orders, decisions, opinions and licenses;
- (2) Any documents, papers and other materials considered by the agency in taking agency action; or
- (3) Any records of the agency reasonably specified by the requesting person.

(b) When making its documents and other materials available to the public the agency may:

- (1) Take reasonable precautions to preserve the integrity and security of such documents or materials;
- (2) Make available only at reasonable, specified intervals documents and materials being actively used by the agency;
- (3) Limit the availability of information to its regular business hours and place of business;

(4) Decline to make available documents and other materials which:

- a. Relate solely to the agency's internal procedural and personnel practices;
- b. Pertain to ongoing enforcement investigations which have not yet resulted in agency action;
- c. Are specifically exempted from disclosure by law; or
- d. Are confidential or privileged for the same or similar reasons as the Court would hold its records confidential or privileged;

(5) Make a reasonable charge for the cost of reproducing or copying such documents or materials.

(c) The Court shall have jurisdiction of all actions to compel an agency to produce or disclose any documents, materials or information and the agency shall have the burden of sustaining its refusal to produce or disclose as requested. (60 Del. Laws, c. 585, § 1.)

§ 10001. Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner so that the citizens shall be advised of the performance of public officials and of the decisions that are made by such officials in formulating and executing public policy. Toward this end, this chapter is adopted, and shall be construed. (60 Del. Laws, c. 641, § 1.)

§ 10002. Definitions.

(a) "Public body" means any regulatory, administrative, advisory, executive or legislative body of the State or any political subdivision of the State including, but not limited to, any board, bureau, commission, department, agency, committee, counsel, legislative committee, association or any other entity established by an act of the General Assembly of the State, which (1) is supported in whole or in part by public funds; (2) expends or disburses public funds; or (3) is specifically charged by any other public body to advise or make recommendations.

(b) "Public business" means any matter over which the public body has supervision, control, jurisdiction or advisory power.

(c) "Public funds" are those funds derived from the State or any political subdivision of the State, but not including grants-in-aid.

(d) "Public record" is written or recorded information made or received by a public body relating to public business. For purposes of this chapter, the following records shall not be deemed public:

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;

(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of identity, obtain a copy of his personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;

(5) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security;

(6) Any records specifically exempted from public disclosure by statute or common law;

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

- (8) Any records involving labor negotiations or collective bargaining;
 - (9) Any records pertaining to pending or potential litigation which are not records of any court;
 - (10) Any record of discussions allowed by § 10004(b) of this title to be held in executive session; or
 - (11) Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon; provided, however, all records relating to such permits shall be available to all bona fide law-enforcement officers.
- (e) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.
- (f) "Agenda" shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting.
- (g) "Public body," "public record" and "meeting" shall not include activities of the Farmers Bank of the State of Delaware or the University of Delaware, except that the Board of Trustees of the University shall be a "public body," and University documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees shall be a "meeting." (60 Del. Laws, c. 641, § 1; 61 Del. Laws, c. 55, § 1.)

Effect of amendment. — 61 Del. Laws, c. 55, effective May 23, 1977, added paragraph (11) in subsection (d).

§ 10003. Examination and copying of public records.

(a) All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen. If the record is in active use or in storage and, therefore, not available at the time a citizen requests access, the custodian shall so inform the citizen and make an appointment for said citizen to examine such records as expediently as they may be made available. Any reasonable expense involved in the copying of such records shall be levied as a charge on the citizen requesting such copy.

(b) It shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. (60 Del. Laws, c. 641, § 1.)

§ 10004. Open meetings.

(a) Every meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (g) of this section.

(b) A public body at any meeting may call for an executive session closed to the public pursuant to subsection (c) of this section for any of the following purposes:

- (1) Discussion of individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open;
- (2) Preliminary discussions on site acquisitions for any publicly funded capital improvements;
- (3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

(4) Strategy sessions with respect to collective bargaining, pending or potential litigation, when an open meeting would have effect on the bargaining or litigation position of the public body;

(5) Discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(6) Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;

(7) The hearing of student disciplinary cases unless the student requests a public hearing;

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed;

(10) Training and orientation sessions conducted to assist members of the public body in the fulfillment of their responsibilities;

(11) Discussion of potential or actual emergencies related to preservation of the public peace, health and safety;

(12) Where the public body has requested an attorney-at-law to render his legal advice or opinion concerning an issue or matter under discussion by the public body and where it has not yet taken a public stand or reached a conclusion in the matter; or

(13) Preliminary discussions resulting from tentative information relating to the management of the public schools in the following areas: School attendance zones; personnel needs; and fiscal requirements.

(c) A public body may hold an executive session closed to the public upon affirmative vote of a majority of members present at a meeting of the public body. The purpose for such executive session shall be announced ahead of time and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must be made at a public meeting and the results of the vote made public, unless disclosure of the existence or results of the vote would disclose information properly the subject of an executive session pursuant to subsection (b) of this section.

(d) This section shall not prohibit the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting.

(e) (1) This subsection concerning notice of meetings shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to the General Assembly.

(2) All public bodies shall give public notice of their regular meetings at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings; however, the agenda shall be subject to change to include additional items or the deletion of items at the time of the public body's meeting.

(3) All public bodies shall give public notice of the type set forth in paragraph (2) of this subsection of any special or rescheduled meeting no later than 24 hours before such meeting.

(4) Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available.

(5) When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting.

(f) Each public body shall make available for public inspection and copying as a public record minutes of all regular, special and emergency meetings. Such minutes shall include a record of those members present and a record, by individual members, of each vote taken and action agreed upon. Such minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive session, but no longer.

(g) This section shall not apply to the proceedings of:

- (1) Grand juries;
- (2) Petit juries;
- (3) Special juries;
- (4) The deliberations of any court;
- (5) The board of Pardons and Parole; and
- (6) Public bodies having only 1 member. (60 Del. Laws, c. 641, § 1.)

§ 10005. Enforcement.

Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 30 days of the citizen's learning of such action but in no event later than 6 months after the date of the action. Any citizen denied access to public records as provided in this chapter may bring suit within 10 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Remedies permitted by this section include a declaratory judgment, writ of mandamus and other appropriate relief. (60 Del. Laws, c. 641, § 1.)

DISTRICT OF COLUMBIA CODE
1973 Edition
Freedom of Information (Open Records)
Right to Inspect Records

AN ACT

1-178

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 19, 1976

To create a Freedom of Information Act; to create rights;
and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "Freedom of Information
Act of 1976".

Sec. 2. The District of Columbia Administrative
Procedure Act (D.C. Code, sec. 1-1501 et seq.) as amended,
is further amended by adding to the end thereof the
following:

"TITLE II FREEDOM OF INFORMATION

"PUBLIC POLICY

"Sec. 201. Generally the public policy of the District
of Columbia is that all persons are entitled to full and
complete information regarding the affairs of government and
the official acts of those who represent them as public
officials and employees. To that end, provisions of this

act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

"RIGHT OF ACCESS TO PUBLIC RECORDS; ALLOWABLE COSTS;

"TIME LIMITS

"Sec. 202. (a) Any person has a right to inspect, and at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by section 204 of this title, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

"(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed 10 dollars for each request. For purposes of this subsection "request" means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be

considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review by the Mayor or an agency to determine if such documents are subject to disclosure.

"(c) The Mayor or an agency, upon request reasonably describing any public record, shall within 10 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

"(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, 'unusual circumstances' are limited to:

"(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

"(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

"(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 207 of this title to review the deemed denial of the request.

"LETTERS OF DENIAL

"Sec. 203. (a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

"(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 204 of this title relied on as authority for the denial;

"(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

"(3) notification to the requester of any administrative or judicial right to appeal under section 207 of this title.

"(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.

EXEMPTIONS

"Sec. 204. (a) The following matters may be exempt from disclosure under the provisions of this title:

"(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

"(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

"(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would-

"(A) interfere with enforcement proceedings,

"(B) deprive a person of a right to a fair trial or an impartial adjudication,

"(C) constitute an unwarranted invasion of personal privacy,

"(D) disclose the identity of a confidential source and, in the case of a record compiled by a

law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

"(E) disclose investigative techniques and procedures not generally known outside the government,

"(F) endanger the life or physical safety of law enforcement personnel;

"(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

"(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

"(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute-

"(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

"(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld ; and

"(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

"(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

"(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not

operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law.

"RECORDING OF FINAL VOTES

"Sec. 205. Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

"INFORMATION WHICH MUST BE MADE PUBLIC

"Sec. 206. Without limiting the meaning of other sections of this title, the following categories of information are specifically made public information:

"(a) the names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

"(b) administrative staff manuals and instructions to staff that affect a member of the public;

"(c) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

"(d) those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

"(e) correspondence and materials referred to therein, by and with the Mayor or an agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

"(f) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

"(g) the minutes of all proceedings of all agencies.

"ADMINISTRATIVE APPEALS AND ENFORCEMENT

"Sec. 207. (a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in

writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

"(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of section 202, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

"(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record. "(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any

records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter de novo, and may examine the contents of such records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 204 of this title.

"(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

"OVERSIGHT

"Sec. 208. On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceeding calendar year. The report shall include:

"(1) The number of determinations made by each agency not to comply with requests for records made to

such agency under this title and the reasons for each such determination;

"(2) The number of appeals made by persons under Section 207(a) of this title, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

"(3) The names and titles or positions of each person responsible for the denial of records requested under this title, and the number of instances of participation for each such person;

"(4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this title;

"(5) such other information as indicates efforts to administer fully this title; and

"(6) For the prior calendar year, a listing of the total number of cases arising under this title, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 204 of this title was cited as a reason for denial of a request, and the

total amount of fees collected under section 202(b) of this act. Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this title.

"DEFINITION

"Sec. 209. For purposes of this title, the terms "Mayor", "Council", "District", "agency", "rule", "rulemaking", "person", "party", "order", "relief", "proceeding", "public record", and "adjudication" shall have the meaning as provided in section 102 of Title I of this Act."

Sec. 3. The District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), as amended, is further amended by-

(a) renumbering sections 2 through 12 thereof as sections 101 through 111, respectively;

(b) inserting in the title heading "Title I Administrative Procedure" between section 1 of such Act and section 101 (as renumbered);

(c) striking out "Act" wherever it appears in sections 101 through 111 (as renumbered) and inserting in lieu thereof "title";

(d) by adding to the end of section 102 (as renumbered) of such Act the following:

"(18) the term 'public record' includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.

"(19) the term 'adjudication' means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order."

(e) by striking "section 7" in section 105 (as renumbered) of such Act and inserting in lieu thereof "section 106".

REPEALER

Sec. 4. Mayor's Order 76-109, dated May 8, 1976, is hereby repealed.

EFFECTIVE DATE

Sec. 5. This act shall take effect pursuant to the provisions of section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act.

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1977 Cumulative Annual Pocket Part
Freedom of Information (Open Records)
Right to Inspect Records
Volume 7A

119.01 General state policy on public records

It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.
Amended by Laws 1973, c. 73-08, § 1, eff. Oct. 1, 1973; Laws 1975, c. 75-225, § 2, eff. July 1, 1975.

119.011 Definitions

For the purpose of this chapter:

(1) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) "Agency" shall mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Amended by Laws 1973, c. 73-08, § 2, eff. Oct. 1, 1973; Laws 1975, c. 75-225, § 3, eff. July 1, 1975.

119.012 Records made public by public fund use

If public funds are expended by an agency defined in subsection 119.011(2) in payment of dues or membership contributions to any person, corporation, foundation, trust, association, group, or other organization, then all the financial, business and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of s. 119.07.
Laws 1975, c. 75-225, § 3, eff. July 1, 1975.

119.02 Penalty

Any public official who shall violate the provisions of subsection 119.07(1) shall be subject to suspension and removal or impeachment and, in addition, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Amended by Laws 1975, c. 75-225, § 6, eff. July 1, 1975.

119.07 Inspection and examination of records; exemptions

(1) Every person who has custody of public records shall permit the records to be inspected and examined by any person desiring to do so, at reasonable times, under reasonable conditions, and under supervision by the custodian of the records or his designee. The custodian shall furnish copies or certified copies of the records upon payment of fees as prescribed by law or, if fees are not prescribed by law, upon payment of the actual cost of duplication of the copies. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency.

(2)(a) All public records which presently are provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, shall be exempt from the provisions of subsection (1).

(b) All public records referred to in ss. 794.03, 198.09, 199.222, 658.10(1), 624-319(3), (4), 624.311(2), and 63.181, are exempt from the provisions of subsection (1).

(c) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment shall be exempt from the provisions of subsection (1). However, an examinee shall have the right to review his own completed examination.
Amended by Laws 1975, c. 75-225, § 4, eff. July 1, 1975.

119.08 Photographing public records

(1) In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public record, instruments or documents, any person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy.

(2) Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent to the room where the said records, documents and instruments are kept as determined by the lawful custodian thereof.

(3) Where the providing of another room or place is necessary, the expense of providing the same shall be paid by the person desiring to photograph the said records, instruments or documents. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments, or in case the same fail to agree as to the said charge, then by the lawful custodian thereof.

119.09 Assistance of the division of archives, history and records management of the department of state

The division of archives, history and records management of the department of state shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing and making available the public records in their custody. When requested by the division, public officials shall assist the division in the preparation of an inclusive inventory of public records in their custody to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the division, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall (subject to the availability of necessary space, staff and other facilities for such purposes) make available space in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

119.10 Violation of chapter a misdemeanor

Any person willfully and knowingly violating any of the provisions of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

119.11 Accelerated hearing; immediate compliance

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period. The filing of a notice of appeal shall not operate as an automatic stay.

(3) A stay order shall not be issued unless the court determines that there is substantial probability that opening the records for inspection will result in significant damage.

Added by Laws 1975, c. 75-225, § 5, eff. July 1, 1975.

119.12 Attorney's fees

(1) Whenever an action has been filed against an agency to enforce the provisions of this chapter and the court determines that such agency unreasonably refused to permit public records to be inspected, the court shall assess a reasonable attorney's fee against such agency.

(2) Whenever an agency appeals a court order requiring it to permit inspection of records pursuant to this chapter and such order is affirmed, the court shall assess a reasonable attorney's fees for the appeal against such agency.

Added by Laws 1975, c. 75-225, § 5, eff. July 1, 1975.

Code of GEORGIA AnnotatedFreedom of Information (Open Records)
Right To Inspect Records

Title 40

40-801c Short title

This Chapter shall be known and may be cited as the "Georgia Records Act."

(Acts 1972, pp. 1267, 1268.)

40-802c Definitions

For the purpose of this Chapter:

(a) "Department" means the Department of Archives and History.

(b) "Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in performance of functions by any agency.

(c) "Agency" means any State office, department, division, board, bureau, commission, authority or other separate unit of State government created or established by law.

(d) "Georgia State Archives" means an establishment maintained by the department for the preservation of those records and other papers that have been determined by the department to have sufficient historical and other value to warrant their continued preservation by the State and have been accepted by the department for deposit in its custody.

(e) "Records center" means an establishment maintained by the department primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space.

(f) "Vital records" means any record vital to the resumption or continuation of operations, or both, to the re-creation of the legal and financial status of government in the State, or to the protection and fulfillment of obligations to citizens of the State.

(g) "Retention schedule" means a set of disposition instructions prescribing how long, where, and in what form a record series shall be kept;

(h) "Record series" means documents or records that are filed in a unified arrangement, having similar physical characteristics or relating to a similar function or activity;

(i) "Records management" means the application of management techniques to the creation, utilization, maintenance, retention, preservation and disposal of records undertaken to reduce costs and improve efficiency of record keeping. Records

management includes management of filing and microfilming equipment and supplies; filing and information retrieval systems; files, correspondence, reports and forms management; historical documentation; micrographics; retention programming and vital records protection.

(Acts 1972, pp. 1267, 1268; 1973, pp. 691, 692; 1975, pp. 675, 676.)

40-803c State Records Committee; creation; membership; duties

There is hereby created the State Records Committee, to be composed of the Governor, the Secretary of State, the Attorney General and the State Auditor, or their designated representatives. It shall be the duty of the committee to review, approve, disapprove, amend or modify retention schedules submitted by agency heads through the department for the disposition of records based on administrative, legal, fiscal or historical values. Such retention schedules, once approved, shall be authoritative, directive and have the force and effect of law. A retention schedule may be determined by three members of the committee. Retention schedules may be amended by the committee on change of program mission or legislative changes affecting the records. The Secretary of State shall serve as chairman of the committee and shall schedule meetings of the committee as required. Three members shall constitute a quorum. Each agency head has the right of appeal to the committee for actions taken under this section.

(Acts 1972, pp. 1267, 1268; 1975, pp. 675, 676.)

40-804c Duties of department

It shall be the duty of the department to:

(a) Establish and administer, under the direction of a State records management officer (who shall be employed under the rules and regulations of the State Merit System), a records management program;

(b) Develop and issue procedures, rules, and regulations establishing standards for efficient and economical management methods relating to the creation, maintenance, utilization, retention, preservation, and disposition of records, filing equipment, supplies, microfilming of records, and vital records program;

(c) Assist State agencies in implementing records programs by providing consultative services in records management, conducting surveys in order to recommend more efficient records management practices, and providing training for records management personnel;

(d) Operate a records center or centers which shall accept all records transferred to it through the operation of approved retention schedules, provide secure storage and reference service for the same and submit written notice to the applicable agency of intended destruction of records in accordance with approved retention schedules.

(Acts 1972, pp. 1267, 1269; 1975, pp. 675, 677.)

40-805c Duty of agencies

It shall be the duty of each agency to:

(a) Cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities;

(b) Cooperate fully with the department in complying with the provisions of this Chapter;

(c) Establish and maintain an active and continuing program for the economical and efficient management of records and assist the department in the conduct of records management surveys;

(d) Implement records management procedures and regulations issued by the department;

(e) Submit to the department, in accordance with the rules and regulations of the department, a recommended disposition standard for each record series in its custody, except that standards for common-type files may be established by the department. No records will be scheduled for permanent retention in an office. No records will be scheduled for retention any longer than is absolutely necessary in the performance of required functions. Records requiring retention for several years will be transferred to the records center for low-cost storage at the earliest possible date following creation.

(f) Establish necessary safeguards against the removal or loss of records and such further safeguards as may be required by regulations of the department. Such safeguards shall include notification to all officials and employees of the agency that no records in the custody of the agency are to be alienated or destroyed except in accordance with the provisions of this Chapter.

(g) Designate an agency records management officer who shall establish and operate a records management program.

(Acts 1972, pp. 1267, 1269; 1975, pp. 675, 677, 678.)

40-806c Construction of Chapter; confidential records

(a) Nothing in this Chapter shall be construed to divest agency heads of the authority to determine the nature and form of records required in the administration of their several departments. Notwithstanding this Section agency heads shall carry out provisions of section 40-805c.

(b) Any records designated confidential by law shall be so treated by the department in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted, or reconstructed.

(Acts 1972, pp. 1267, 1270; 1975, pp. 675, 678.)

40-807c Disposal of records

(a) All records created or received in the performance of duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts;

(b) The destruction of records shall occur only through the operation of an approved retention schedule. Such records shall not be placed in the custody of private individuals or institutions or semi-private organizations unless authorized by retention schedules;

(c) The alienation, alteration, theft or destruction of records by any person or persons in a manner not authorized by an applicable retention schedule is punishable as a misdemeanor;

(d) No person acting in compliance with the provisions of this Chapter shall be held personally liable.

(Acts 1972, pp. 1267, 1270; 1975, pp. 675, 679.)

40-808c Photostatic copies of records as primary evidence

Photostatic copies of records produced from microfilm and printout copies of computer records shall be received in any court of this State as primary evidence of the recitals contained therein.

(Acts 1972, pp. 1267, 1270.)

40-809c Certified copies

The department may make certified copies under seal of any records or any preservation duplicates transferred or deposited in the Georgia State Archives, or the records center, or may make reproductions of such records. Such certified copies or reproductions, when signed by the director of the department, shall have the same force and effect as if made by the agency from which the records were received. The department may establish and charge reasonable fees for such services.

(Acts 1972, pp. 1267, 1271.)

40-810c Title to records

(a) Title to any record transferred to the Georgia State Archives as authorized by this Chapter shall be vested in the department. The department shall not destroy any record transferred to it by an agency without consulting with the proper official of the transferring agency prior to submitting a retention schedule requesting such destruction to the State Records Committee. Access to records of Constitutional Officers shall be at the discretion of the Constitutional Officer who created, received, or maintained the records, but no limitation on access to such records shall extend more than 25 years after creation of the records.

(b) Title to any record transferred to the records center shall remain in the agency transferring such record to the records center.

(Acts 1972, pp. 1267, 1271; 1973, pp. 691, 692; 1975, pp. 675, 679.)

40-811c Establishment of records management program by local governments

Local governments are hereby authorized by appropriate resolution or ordinance of the governing authority to adopt and utilize the State rules and regulations as a basis for establishing a records management program. Any court in this State is hereby authorized to adopt and utilize the State rules and regulations as a basis for the conduct of a records management program. No records in the custody of any court in this State shall be aliened or destroyed except in accordance with the provisions of this Chapter.

(Acts 1972, pp. 1267, 1271; 1973, pp. 691, 692.)

40-812c Confidential, classified or restricted records; restrictions on access; lifting of restrictions

(a) This section applies only to those records (1) that are confidential, classified or restricted by Acts of the General Assembly, or may be declared to be confidential, classified or restricted by future Acts of the General Assembly, unless said future Acts specifically exempt these records from the provisions of this section; and (2) that have been, or are in the future, deposited in the Georgia State Archives or in other State-operated archival institutions because of their value for historical research;

(b) All restrictions on access to records covered by this section are hereby lifted and removed 75 years after the creation of the record;

(c) Restrictions on access to records covered by this section may be lifted and removed as early as 20 years after the creation of the record on unanimous approval in writing of the State Records Committee;

(d) Applications requesting that the State Records Committee review and consider lifting such restrictions may be made either by the director of the department or by the head of the agency that transferred the record to the Archives.

(Acts 1975, pp. 675, 680.)

40-813c Same; use for research purposes

(a) Records that are by law confidential, classified or restricted may be used for research purposes by private researchers providing that (1) the researcher is qualified to perform such research; (2) the research topic is designed to produce a study that would be of potential benefit to the State or its citizens; and (3) the researcher will agree in writing to protect the confidentiality of the information contained in the records. When the purpose of the confidentiality is to protect the rights of privacy of any person or persons who are named in the records the researcher must agree, in either his notes or in his finished study or in any manner, not to refer to said person in such a way that they can be identified. When the purpose of the confidentiality is to protect other information the researcher must agree not to divulge that information;

(b) The head of the agency that created the records (or his designee) shall determine whether or not the researcher and his research topic meets the qualifications set forth in subsection (a) above prior to accepting the signed agreement from the researcher and granting permission to use the confidential records;

(c) The use of such confidential records for research shall be considered a privilege and the agreement signed by the researcher shall be binding on him. Researchers who violate the

confidentiality of these records shall be punishable in the same manner as would government employees or officials found guilty of this offense.

(Acts 1975, pp. 675, 680.)

40-814c Construction of certain laws and rules and regulations

(a) All laws or parts of laws prescribing how long or in what form records shall be kept are hereby repealed;

(b) Whenever laws or rules and regulations prescribed where a record series must be kept, the custodian of such records shall be considered in compliance with said laws, rules and regulations if he transfers said records to a local holding area, a records center, or the Georgia State Archives when he does so in accordance with an approved retention schedule.

(Acts 1975, pp. 675, 681.)

40-2701 Right of public to inspect records

All State, county and municipal records, except those, which by order of a court of this State or by law, are prohibited from being open to inspection by the general public, shall be open for a personal inspection of any citizen of Georgia at a reasonable time and place, and those in charge of such records shall not refuse this privilege to any citizen.

(Acts 1959, p. 88.)

40-2702 Supervision of persons photographing records; charge for services of deputy

In all cases where a member of the public interested has a right to inspect or take extracts or make copies from any public records, instruments or documents, any such person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall be done in the room where the said records, documents or instruments are by law kept. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments.

(Acts 1959, pp. 88, 89.)

40-2703 Exception of certain records

The provisions of this Chapter shall not be applicable to records that are specifically required by the Federal Government to be kept confidential or to medical records and similar files, the disclosure of which would be an invasion of personal privacy. All records of hospital Authorities other than the foregoing shall be subject to to the provisions of this Chapter. All State officers and employees shall have a privilege to refuse to disclose the identity of any person who has furnished medical or other similar information which has

or will become incorporated into any medical or public health investigation, study or report of the Department of Human Resources. The identity of such informant shall not be admissible in evidence in any court of the State unless the said court finds that the identity of the informant already has been otherwise disclosed.

(Acts 1967, p. 455; 1970, p. 163.)

HAWAII Revised Statutes

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Volume 2 Chapter 92

§92-50 Definition. As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual. [L 1975, c 166, pt of §2]

§92-51 Public records; available for inspection; cost of copies. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person.

Certified copies of extracts from public records shall be given by the officer having the same in custody to any person demanding the same and paying or tendering twenty cents per folio of one hundred words for such copies or extracts. [L 1975, c 166, pt of §2]

§92-52 Denial of inspection; application to circuit courts. Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause. [L 1975, c 166, pt of §2]

General Laws of IDAHO Annotated
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Freedom of Information (Open Records)
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Volume 2

9-302. Furnishing of certified copy—Duty of officer having custody—Copy as evidence—Fees.—Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing. When the amount of the legal fees for such certified copies is not otherwise specified, the officer furnishing the copies shall demand and receive therefor twenty cents for each folio of one hundred words: provided, however, that when the copies are furnished said public officer, and that proofreading and correction alone is necessary, said officer shall, whether the amount of legal fees for certified copies is specified herein or elsewhere, charge five cents per folio, which shall be in lieu of all other charges, including certificate. [C. C. P. 1881, § 903; R. S., R. C., & C. L., § 5966; C. S., § 7941; am. 1923, ch. 64, § 1, p. 71; am. 1925, ch. 124, § 1, p. 170; I. C. A., § 16-302.]

9-301. Public writings—Right to inspect and take copy.—Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. [C. C. P. 1881, § 902; R. S., R. C., & C. L., § 5965; C. S., § 7940; I. C. A., § 16-301.]

Volume 10

59-1009. Official records open to inspection. — The public records and other matters in the office of any officer are, at all times during office hours,

open to the inspection of any citizen of this state. [R.S., § 454; am. R.C., § 341; reen. C.L., § 341; C.S., § 479; I.C.A., § 57-1009.]

59-1011. Furnishing account books — Examination by citizens. — It shall be the duty of the state and county officers respectively charged with furnishing books and stationery for public use, to furnish suitable books for the purpose to such officers; and such books shall be subject to examination by any citizen at any reasonable time, and such citizen shall be entitled to take memoranda from the same without charges being imposed: provided, if any person or persons desire certified copies of any such account, the officer or person in charge of said books shall be entitled to demand and receive fees for the same, as for copies of other public records in his control. [1901, p. 208, § 2; reen. R.C. & C.L., § 343; C.S., § 481; I.C.A., § 57-1011.]

Smith-Hurd ILLINOIS Annotated Statutes
1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
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Chapter 35

§ 9. Custody of records—Public inspection

The county clerk shall have the care and custody of all the records, books and papers appertaining to and filed or deposited in their respective offices, and the same, except as otherwise provided in the "Vital Statistics Act", enacted by the Seventy-Second General Assembly,¹ shall be open to the inspection of all persons without reward. As amended 1961, Aug. 8, Laws 1961, p. 2917, § 1.

Chapter 116

§ 42.5 Definitions

For the purposes of this Act:

"Secretary" means Secretary of State.

"Record" or "records" means all books, papers, maps, photographs, or other official documentary materials, regardless of physical form or characteristics, made, produced, executed or received by any agency in the State in pursuance of state law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its successor as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the State or of the State Government, or because of the informational data contained therein. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this Act.

"Agency" means all parts, boards, and commissions of the executive branch of the State government including but not limited to all departments established by the "Civil Administrative Code of Illinois," as heretofore or hereafter amended.

"Public Officer" or "public officers" means all officers of the executive branch of the State government, all officers created by the "Civil Administrative Code of Illinois," as heretofore or hereafter amended,¹ and all other officers and heads, presidents, or chairmen of boards, commissions, and agencies of the State government.

"Commission" means the State Records Commission.

"Archivist" means the Secretary of State. 1957, July 6, Laws 1957, p. 1687, § 2.

§ 42.6 Reports and records of obligation, receipt and use of public funds as public records

Reports and records of the obligation, receipt and use of public funds of the State are public records available for inspection by the public. These records shall be kept at the official place of business of the State or at a designated place of business of the State. These records shall be available for public inspection during regular office hours except when in immediate use by persons exercising official duties which require the use of those records. The

person in charge of such records may require a notice in writing to be submitted 24 hours prior to inspection and may require that such notice specify which records are to be inspected. Nothing in this section shall require the State to invade or assist in the invasion of any person's right to privacy. Nothing in this Section shall be construed to limit any right given by statute or rule of law with respect to the inspection of other types of records.

Warrants and vouchers in the keeping of the State Comptroller may be destroyed by him as authorized in "An Act in relation to the reproduction and destruction of records kept by the Comptroller", approved August 1, 1949, as now or hereafter amended.¹

1957, July 6, Laws 1957, p. 1687, § 2. Amended by P.A. 77-1870, § 1, eff. Oct. 1, 1972; P.A. 79-139, § 2, eff. Oct. 1, 1975.

§ 42.7 Right of access by public—Reproductions—Fees

Any person shall have the right of access to any public records of the expenditure or receipt of public funds as defined in Section 3¹ for the purpose of obtaining copies of the same or of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy. The photographing shall be done under the supervision of the lawful custodian of said records, who has the right to adopt and enforce reasonable rules governing such work. The work of photographing shall, when possible, be done in the room where the records, documents or instruments are kept. However, if in the judgment of the lawful custodian of the records, documents or instruments, it would be impossible or impracticable to perform the work in the room in which the records, documents or instruments are kept, the work shall be done in some other room or place as nearly adjacent as possible to the room where kept. Where the providing of a separate room or place is necessary, the expense of providing for the same shall be borne by the person or persons desiring to photograph the records, documents or instruments. The lawful custodian of the records, documents or instruments may charge the same fee for the services rendered by him or his assistant in supervising the photographing as may be charged for furnishing a certified copy or copies of the said record, document or instrument. In the event that the lawful custodian of said records shall deem it advisable in his judgment to furnish photographs of such public records, instruments or documents in lieu of allowing the same to be photographed, then in such event he may furnish photographs of such records and charge a fee of 35¢ per page when the page to be photographed does not exceed legal size and \$1.00 per page when the page to be photographed exceeds legal size and where the fees and charges therefor are not otherwise fixed by law. 1957, July 6, Laws 1957, p. 1687, § 4.

INDIANA Statutes Annotated
1977 Cumulative Pocket Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Title 5 - Public Proceedings
Chapter 1

5-14-1-1 [57-601]. Construction of act.—Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principal [principle] that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of Indiana that all of the citizens of this state are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those whom the people select to represent them as public officials and employees.

To that end, the provisions of this act [5-14-1-1—5-14-1-6] shall be liberally construed with the view of carrying out the above declaration of policy. [Acts 1953, ch. 115, § 1, p. 427.]

5-14-1-2 [57-602]. Definitions. — As used in this chapter [5-14-1-1 — 5-14-1-6]:

The term "public records" shall mean any writing in any form necessary, under or required, or directed to be made by any statute or by any rule or regulation of any administrative body or agency of the state or any of its political subdivisions. [Acts 1953, ch. 115, § 2, p. 427; 1977, P.L. 57, § 2, p. —.]

(2) The term "public proceedings" shall mean the transaction of governmental functions affecting any or all of the citizens of the state by any administrative body or agency of the state, or any of its political subdivisions when such administrative body or agency is convened for the purpose of transacting the governmental function with which it is charged under any statute or under any rule or regulation of such administrative body or agency. [Acts 1953, ch. 115, § 2, p. 427.]

5-14-1-3 [57-603]. Right of inspection of public records.—Except as may now or hereafter be otherwise specifically provided by law, every citizen of this state shall, during the regular business hours of all administrative bodies or agencies of the state, or any political subdivision thereof, have the right to inspect the public records of such administrative bodies or agencies, and to make memoranda abstracts from the records so inspected. [Acts 1953, ch. 115, § 3, p. 427.]

5-14-1-5 [57-605]. Exceptions to chapter — Confidential records. — Nothing in this chapter [5-14-1-1 — 5-14-1-6] contained shall be construed to modify or repeal any existing law with regard to public records which, by law, are declared to be confidential. [Acts 1953, ch. 115, § 5, p. 427; 1977, P.L. 57, § 3, p. —.]

5-14-1-6 [57-606]. Violation of act by official — Separability. — (a) Any public official of the state, or of any political subdivision thereof, who denies to any citizen the rights guaranteed to such citizen under the provisions of section 3 [5-14-1-3] of this chapter is guilty of an infraction.

(b) Any citizen who has been denied the rights guaranteed under section 3 of this chapter, may bring a complaint to compel inspection. The citizen need not allege or prove any special damage different from that suffered by the public at large.

(c) Each section, subsection, sentence, clause and phrase of this chapter [5-14-1-1—5-14-1-6] is declared to be an independent section, subsection, sentence, clause or phrase, and the finding or holding of any section, subsection, sentence, clause or phrase to be unconstitutional, void or ineffective for any cause shall not affect any other section, subsection, sentence or part thereof. [Acts 1953, ch. 115, § 6, p. 427; 1971, P.L. 51, § 1, p. 264; 1977, P.L. 57, § 4, p. —.]

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Freedom of Information (Open Records)
Right to Inspect Records
Vol. 4A

68A.1 Public records defined

Wherever used in this chapter, "public records" includes all records and documents of or belonging to this state or any county, city, town, township, school corporation, political subdivision, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

Acts 1967 (62 G.A.) ch. 106, § 1, eff. Aug. 9, 1967.

68A.2 Citizen's right to examine

Every citizen of Iowa shall have the right to examine all public records and to copy such records, and the news media may publish such records, unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential. The right to copy records shall include the right to make photographs or photographic copies while the records are in the possession of the lawful custodian of the records. All rights under this section are in addition to the right to obtain certified copies of records under section 622.46.

Acts 1967 (62 G.A.) ch. 106, § 2, eff. Aug. 9, 1967.

68A.3 Supervision

Such examination and copying shall be done under the supervision of the lawful custodian of the records or his authorized deputy. The lawful custodian may adopt and enforce reasonable rules regarding such work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for such work, but if it is impracticable to do such work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for such work. All expenses of such work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or his authorized deputy in supervising the records during such work. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service.

Amended by Acts 1976 (66 G.A.) ch. 1079, § 1.

68A.4 Hours when available

The rights of citizens under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a. m. to noon and from one o'clock p. m. to four o'clock p. m. Monday through Friday, excluding legal holidays, unless the citizen exercising such right and the lawful custodian agree on a different time.

Acts 1967 (62 G.A.) ch. 106, § 4, eff. Aug. 9, 1967.

68A.5 Enforcement of rights

The provisions of this chapter and all rights of citizens under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, if the records involved are records of an "agency" as defined in that Act.

Amended by Acts 1974 (65 G.A.) ch. 1090, § 210, eff. July 1, 1975.

1974 Amendment: Re-wrote the section.

68A.6 Penalty

It shall be unlawful for any person to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor.

Amended by Acts 1976 (66 G.A.) ch. 1245 (ch. 4), § 28, eff. Jan. 1, 1978.

1976 Amendment. Added "simple" misdemeanor and deleted a specified penalty.

68A.7 Confidential records

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release information:

1. Personal information in records regarding a student, prospective student, or former student of the school corporation or educational institution maintaining such records.

2. Hospital records and medical records of the condition, diagnosis, care, or treatment of a patient or former patient, including outpatient.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers investigative reports, except where disclosure is authorized elsewhere in this Code.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Iowa development commission information on an industrial prospect with which the commission is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests shall be public records.

10. Personal information in confidential personnel records of the military department of the state.

11. Personal information in confidential personnel records of public bodies including but not limited to cities, towns, boards of supervisors and school districts.

Acts 1967 (62 G.A.) ch. 106, § 7, eff. Aug. 9, 1967.

68A.8 Injunction to restrain examination

In accordance with the rules of civil procedure the district court may grant an injunction restraining the examination (including copying) of a specific public record, if the petition supported by affidavit shows and if the court finds that such examination would clearly not be in the public interest and would substantially and irreparably injure any person or persons. The district court shall take into account the policy of this chapter that free and open examination of public records is generally in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Such injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond. Reasonable delay by any person in permitting the examination of a record in order to seek an injunction under this section is not a violation of this chapter, if such person believes in good faith that he is entitled to an injunction restraining the examination of such record.

Acts 1967 (62 G.A.) ch. 106, § 8, eff. Aug. 9, 1967.

68A.9 Denial of federal funds

If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

Acts 1967 (62 G.A.) ch. 106, § 11, eff. Aug. 9, 1967.

IOWA Code Annotated
Recent Amendment
Freedom of Information (Open Records)
Right to Inspect Records

HOUSE FILE 299

AN ACT

RELATING TO THE CONFIDENTIALITY OF DOCUMENTS FILED FOR THE
PURPOSE OF OBTAINING A WARRANT FOR AN ARREST OR A
SEARCH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Chapter eight hundred four (804), Code 1977 Supplement, is amended by adding the following new section:

NEW SECTION. CONFIDENTIALITY. All information filed with the court for the purpose of securing a warrant for an arrest, including but not limited to a citation and affidavits, shall be a confidential record until such time as a peace officer has made the arrest and has made his or her return on the warrant. During the period of time that information is confidential, it shall be sealed by the court and the information contained therein shall not be disseminated to any person other than a peace officer, magistrate, or another court employee, in the course of official duties.

Sec. 2. Chapter eight hundred eight (808), Code 1977 Supplement, is amended by adding the following new section:

NEW SECTION. CONFIDENTIALITY. All information filed with the court for the purpose of securing a warrant for a search, including but not limited to an application and affidavits, shall be a confidential record until such time as a peace officer has executed the warrant and has made return thereon. During the period of time that information is confidential it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than

House File 299, P. 2

a peace officer, magistrate, or another court employee, in the course of official duties.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 299, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved 4/17/ 1978

ROBERT D. RAY
Governor

KANSAS Statutes Annotated
1977 Cumulative Pocket Part Supplement

Freedom of Information (Open Records)
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Volume 3A

45-201. Official public records open to inspection; exceptions; "official public records" defined. (a) All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the district court concerning proceedings pursuant to the juvenile code which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen.

(b) For the purposes of this act and the act of which this act is amendatory, the term "official public records" shall not be deemed to apply to personally identifiable records, files, and data which are described in K.S.A. 1976 Supp. 72-6214 and the accessibility and availability of which is limited by the terms of said section.

History: K.S.A. 45-201; L. 1976, ch. 228, § 2; L. 1976, ch. 151, § 6; Jan. 10, 1977.

45-202. Same; photographing records, when; rules. In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any such public records, instruments or documents, any such person shall have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian

of the said records who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent as may be available. [L. 1957, ch. 455, § 2; June 29.]

45-203. Same; penalties for violations. Any official who shall violate the provisions of this act shall be subject to removal from office and in addition shall be deemed guilty of a misdemeanor. [L. 1957, ch. 455, § 3; June 29.]

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Volume 6A

(relating to motor fuel tax investigations; references are to Director of Taxation)

79-3420. Examination of books, records, property and equipment; secrecy required; exceptions. The director, or any deputy or agent appointed in writing by him, is hereby authorized to examine the books, papers, records, storage tanks, tank wagons, trucks, and any other equipment of any distributor, dealer, carrier, or any other person, pertaining to the use, storage, transportation, or sale and delivery of liquid fuels or motor fuels, to verify the accuracy of any report, statement, or payment made under the provisions of this act, or to ascertain whether or not all reports and tax payments required by this act have been made; but any information gained by the director, his deputies or agents, as the result of the reports, investigations, and verifications herein required to be made, shall be confidential, and shall not be divulged by any person except as herein provided. Every distributor, dealer, transporter, and consumer, and every person handling or possessing any liquid fuels or motor-vehicle fuels shall give said director, or his deputy or agent appointed in writing, full and free access during reasonable business hours to all the papers, records, and property hereinbefore mentioned, with full opportunity to examine the same: *Provided, however,* That the director may publish the gallons received by each licensed motor-vehicle fuel distributor and the deductions claimed by such distributor and may make available or furnish information to the taxing officials of any other state or of the federal government, or the director of property valuation, in the manner as provided in K. S. A. 74-2424 and acts amendatory thereof. [K. S. A. 79-3420; L. 1971, ch. 317, § 1; July 1.] *

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(relating to LP gas taxes)

79-3499. Records, invoices, bills of lading; preservation; examination of records and equipment; secrecy required. Each LP-gas user or LP-gas dealer shall maintain and keep for a period of three (3) years, such record or records of LP-gas purchased, sold or placed into the fuel supply tank or tanks of motor vehicles within this state by such LP-gas user or LP-gas dealer, together with invoices, bills of lading and other pertinent records and papers as may be required by the director for the reasonable administration of the act.

Every person who sells LP-gas to any person must, at the time of such sale and delivery, make and deliver to the purchaser, consignee or an agent thereof, an invoice covering each such delivery showing the date, the name and address of the seller, the number of gallons of LP-gas, the place of delivery, the name and address of the buyer, and such other information as the director may require. Each such invoice must be identified by consecutive numbers printed thereon, and each seller or consignor must be able to account for each numbered delivery invoice and each copy thereof.

Every person who purchases, accepts or receives any LP-gas must, at the time of delivery or acceptance of such LP-gas demand and receive an invoice as required by this section covering such LP-gas. All invoices required by this section must be furnished by the respective sellers and persons distributing such fuel.

The director and/or secretary of revenue, or any deputy or agent appointed in writing by either of them, is hereby authorized to examine the books, papers, records, storage

tanks, and any other equipment of any LP-gas user or LP-gas dealer, or any other person, pertaining to the use, storage, transportation, or sale and delivery of LP-gas, to verify the accuracy of any report, statement, or payment made under the provisions of this act, or to ascertain whether or not all reports and tax payments required by this act have been made; but any information gained by the director, the secretary of revenue, their deputies or agents, as the result of the reports, investigation, and verifications herein required to be made, shall be confidential, and shall not be divulged by any person, except as shall be necessary in the administration and enforcement of this act or any rules and regulations promulgated by the director, pursuant thereto, or as provided in this act. Every LP-gas user or LP-gas dealer, and every person handling or possessing any such LP-gas shall give said director, the secretary of revenue, or their deputies or agents appointed in writing, full and free access during reasonable business hours to all the papers, records, and property hereinbefore mentioned, with full opportunity to examine the same. [K. S. A. 79-3499; L. 1973, ch. 402, § 16; July 1.]

KENTUCKY Revised Statutes
1976 Cumulative Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Volume 3

OPEN RECORDS

61.870. Definitions.—As used in KRS 61.872 to 61.884:

(1) "Public agency" means every state or local officer, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer; every county and city governing body, council, school district board, special district board, municipal corporation, court or judicial agency, and any board, department, commission, committee, subcommittee, ad hoc committee, council or agency thereof; and any other body which is created by state or local authority in any branch of government or which derives at least twenty-five per cent (25%) of its funds from state or local authority.

(2) "Public records" means all books, papers, maps, photographs, cards, tapes, discs, recordings or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned by a private person or corporation that are not related to functions, activities, programs or operations funded by state or local authority.

(3) "Official custodian" means the chief administrative officer or any other officer or employe of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(4) "Custodian" means the official custodian or any authorized person having personal custody and control of public records. (Enact. Acts 1976, ch. 273, § 1.)

61.872. Right to inspection—Limitation.—(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884 and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records during the regular office hours of the public agency. The official custodian may require written application describing the records to be inspected.

(3) If the person to whom the application is directed does not have custody or control of the public record requested, such person shall so notify the applicant and shall furnish the name and location of the custodian of the public record, if such facts are known to him.

(4) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately so notify the applicant and shall designate a place, time and date, for inspection of the public

records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time and earliest date on which the public record will be available for inspection.

(5) If the application places an unreasonable burden in producing voluminous public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records. However, refusal under this section must be sustained by clear and convincing evidence. (Enact. Acts 1976, ch. 273, § 2.)

61.874. Abstracts, memoranda, copies—Agency may prescribe fee.—

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all written public records. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee. If the applicant desires copies of public records other than written records, the custodian of such records shall permit the applicant to duplicate such records, however, the custodian may insure that such duplication will not damage or alter the records.

(2) The public agency may prescribe a reasonable fee for making copies of public records which shall not exceed the actual cost thereof not including the cost of staff required. (Enact. Acts 1976, ch. 273, § 3.)

61.876. Agency to adopt rules and regulations.—(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:

(a) The principal office of the public agency and its regular office hours;

(b) The title and address of the official custodian of the public agency's records;

(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;

(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.

(3) The executive department for finance and administration may promulgate uniform rules and regulations for all state administrative agencies. (Enact. Acts 1976, ch. 273, § 4.)

61.878. Right of inspection only on order of court.—(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research, in conjunction with an application for a loan, the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans,

appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential, or for the grant or review of a license to do business and if openly disclosed would permit an unfair advantage to competitors of the subject enterprise. This exemption shall not, however apply to records the disclosure or publication of which is directed by other statute.

(c) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the commonwealth. Provided, however, That this exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (b) above.

(d) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired; Provided, however, the law of eminent domain shall not be affected by this provision.

(e) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination before the exam is given or if it is to be given again.

(f) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action. Provided, however that the exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884.

(g) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(h) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(i) All public records or information the disclosure of which is prohibited by federal law or regulation;

(j) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the general assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(4) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental

need or is necessary in the performance of a legitimate government function. (Enact. Acts 1976, ch. 273, § 5.)

61.880. Denial of inspection—Role of attorney general.—(1) Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) A copy of the written response denying inspection of a public record shall be forwarded immediately by the agency to the attorney general of the commonwealth of Kentucky. If requested by the person seeking inspection, the attorney general shall review the denial and issue within ten (10) days (excepting Saturdays, Sundays and legal holidays) a written opinion to the agency concerned, stating whether the agency acted consistent with provisions of KRS 61.870 to 61.884. A copy of the opinion shall also be sent by the attorney general to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency and the attorney general may request additional documentation from the agency for substantiation. The attorney general may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the attorney general of any actions filed against that agency in circuit court regarding the enforcement of KRS 61.870 to 61.884.

(4) In the event a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the attorney general and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) If the attorney general upholds, in whole or in part, the request for inspection, the public agency involved may institute proceedings within thirty (30) days for injunctive or declaratory relief in the circuit court of the district where the public record is maintained. If the attorney general disallows the request or if the public agency continues to withhold the record notwithstanding the opinion of the attorney general, the person seeking disclosure may institute such proceedings. (Enact. Acts 1976, ch. 273, § 6.)

61.882. Jurisdiction of circuit court in action seeking right of inspection—Burden of proof—Costs—Attorney fees.—(1) The circuit courts of this state shall have jurisdiction to enforce the purposes of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any citizen of this state.

(2) In order for the circuit courts of this state to exercise their jurisdiction to enforce the purposes of KRS 61.870 to 61.884, it shall not be necessary to have forwarded any request for the documents to the attorney general pursuant to KRS 61.880, or for the attorney general to have acted in any manner upon a request for his opinion.

(3) In any such action, the court shall determine the matter de novo and the burden of proof shall be on the public agency to sustain

its action. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Courts shall take into consideration the basic policy of KRS 61.570 to 61.884 that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.870 to 61.884 or otherwise provided for by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others. Except as otherwise provided by law or rule of court, proceedings arising under this section take precedent on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against an agency in any action in the courts seeking the right to inspect and copy any public record may, upon a finding that the records were wilfully withheld in violation of KRS 61.870 to 61.884, be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars (\$25.00) for each day that he was denied the right to inspect or copy said public record. The costs or award shall be paid by such person or agency as the court shall determine is responsible for the violation. (Enact. Acts 1976, ch. 273, § 7.)

61.884. Person's access to record relating to him.—Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878. (Enact. Acts 1976, ch. 273, § 8.)

West's LOUISIANA Statutes Annotated
1976 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Volume 24

§ 1. General definitions

A. All records, writings, accounts, letters and letter books, maps, drawings, memoranda and papers, and all copies or duplicates thereof, and all photographs or other similar reproductions of the same, having been used, being in use, or prepared for use in the conduct, transaction or performance of any business, transaction, work, duty or function which was conducted, transacted or performed by or under the authority of the Constitution or the laws of this state, or the ordinances or mandates or orders of any municipal or parish government or officer or any board or commission or office established or set up by the Constitution or the laws of this state, or concerning or relating to the receipt or payment of any money received or paid by or under the authority of the Constitution or the laws of this state are

public records, subject to the provisions of this Chapter except as herein-after provided.

B. All electric logs produced from wells drilled in search of oil and gas which are filed with the Commissioner of Conservation shall remain confidential upon the request of the owner so filing for periods as follows:

For wells shallower than fifteen thousand feet a period of one year, plus one additional year when evidence is submitted to the Commissioner of Conservation that the owner of the log has a leasehold interest in the general area in which the well was drilled and the log produced; for wells fifteen thousand deep or deeper, a period of two years, plus two additional years when evidence is submitted to the Commissioner of Conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced; provided however that no release will be required of logs produced from wells drilled in the off-shore area.

At the expiration of time in which any log or logs shall be held as confidential by the Commissioner of Conservation as provided for above said log or logs shall be placed in the open files of the Department of Conservation and any party or firm shall have the right to examine and/or reproduce, at their own expense, copies of said log or logs by photography or other means not injurious to said records.

Amended by Acts 1973, No. 135, § 1; Acts 1973, Ex.Sess., No. 4, § 1.

§ 2. Records involved in legislative investigations

Subject to the proviso set forth in Sub-section B of R.S. 44:3, the provisions of this Chapter shall not apply to any records, writings, accounts, letters, letter books, photographs or copies thereof, in the custody or control of any attorney or counsel whose duties or functions are performed by or under the authority of the legislature and which concern or hold relation to any case, cause, charge or investigation being conducted by or through the legislature, until after the case, cause, charge or investigation has been finally disposed of.

After final disposition, the records, writings, accounts, letters, letter books, photographs or copies thereof, are public records and subject to the provisions of this Chapter.

§ 3. Records of prosecutive, investigative, and law enforcement agencies

A. Nothing in this Chapter shall be construed to require disclosure of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, marshals, investigators, correctional agencies, investigative agencies, or intelligence agencies of the state, which records are:

(1) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled; or

(2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, or internal security information.

B. All records, files, documents, and communications, and information contained therein, pertaining to or tending to impart the identity of any confidential source of information of any of the state officers, agencies, or departments mentioned in Paragraph A above, shall be privileged, and no court shall order the disclosure of same except on grounds of due process or constitutional law. No officer or employee of any of the officers, agencies, or departments mentioned in Paragraph A above shall disclose said privileged information or produce said privileged records, files, documents, or communications, except on a court order as provided above or with the written consent of the chief officer of the agency or department where he is employed or in which he holds office, and to this end said officer or employee shall be immune from contempt of court and from any and all other criminal penalties for compliance with this paragraph.

C. Whenever the same is necessary, judicial determination pertaining to compliance with this section or with constitutional law shall be made after a contradictory hearing as provided by law. An appeal by the state or an officer, agency, or department thereof shall be suspensive.

D. Nothing in this section shall be construed to prevent any and all prosecutive, investigative, and law enforcement agencies from having among themselves a free flow of information for the purpose of achieving coordinated and effective criminal justice.

Amended by Acts 1972, No. 448, § 1.

§ 4. Tax returns; records relating to old age assistance; dependent children; liquidation proceedings; banks; insurance ratings

This Chapter shall not apply:

- (1) To any tax returns.
- (2) To the name of any person or any other information from the records, papers or files of the state or its political subdivisions or agencies, concerning persons applying for or receiving old age assistance, aid to the blind, or aid to dependent children.
- (3) To any records, writings, accounts, letters, letter books, photographs or copies thereof, in the custody or control of any officer, employee, agent or agency of the state whose duties and functions are to investigate, examine, manage in whole or in part, or liquidate the business of any private person, firm or corporation in this state, when the records, writings, accounts, letters, letter books, photographs or copies thereof, pertain to the business of the private person, firm or corporation, and are in their nature confidential.
- (4) To any records, writings, accounts, letters, letter books, photographs or copies thereof in the custody or control of the state bank commissioner or agent, insofar as the records relate to solvent banks engaged in the banking business at the time of application for inspection.
- (5) To any daily reports or endorsements filed by insurance companies doing business in this state with the Louisiana Casualty and Surety Rating Commission in accordance with the laws of this state.
- (6) To any records, writings, accounts, letters, letter books, photographs or copies or memoranda thereof in the custody or control of the Supervisor of Public Funds, unless otherwise provided by law.
- (7) To any records, writings, accounts, letters, letter books, photographs or copies or memoranda thereof, and any report or reports concerning the fitness of any person to receive, or continue to hold, a license to practice medicine or midwifery, in the custody or control of the Louisiana State Board of Medical Examiners. As amended Acts 1950, No. 155, § 1.

§ 5. Records in custody of governor

This Chapter shall not apply to any of the books, records, writings, accounts, letters, letter books, photographs or copies thereof, ordinarily kept in the custody or control of the governor in the usual course of the duties and business of his office.

The provisions of this Section shall not prevent any person otherwise herein authorized so to do from examining and copying any books, records, papers, accounts or other documents pertaining to any money or moneys or any financial transactions in the control of or handled by or through the governor.

§ 8. Louisiana office building corporation, special provisions

A. The private, nonprofit corporation known as the Louisiana Office Building Corporation, incorporated in the parish of East Baton Rouge on June 30, 1965, is hereby declared to be a quasi-public corporation. All papers, documents, contracts, legal agreements, correspondence, minutes of meetings and any other record whatsoever of said corporation are hereby declared to be matters of public record, and shall be open to inspection by state officials and employees, members of the Legislature and legislative staff personnel and the general public. The officers, members of the board of directors, agents and employees of said corporation are hereby authorized and directed to grant access to any record of said corporation upon request. The procedure for access to records under the authority of this Section shall be in keeping with the general provisions for access to public records contained in Chapter I of this Title.

B. All officers, directors and employees of the Louisiana Office Building Corporation who are also elected officials of the State of Louisiana shall be subject to the provisions of the code of ethics for state elected officials contained in R.S. 42:1141-1148 with reference to actions taken in their capacities as such officers, directors or employees of the said corporation. All other officers, directors and employees of the corporation shall be subject to the provisions of the code of ethics for state employees contained in R.S. 42:1111-1123 to the same extent as any state employees.

C. All books and records of the Louisiana Office Building Corporation shall be subject to audit and review by the Legislative Auditor to the same extent as all other state departments or agencies. Added Acts 1996, No. 429, H 1-3.

§ 9. Records of violations of municipal ordinances and of state statutes classified as misdemeanors

A. Any person who has been arrested for a violation of a municipal ordinance or for violation of a state statute which is classified as a misdemeanor, except in cases of arrests for a first or second violation of any ordinance and/or statute making criminal the driving of a motor vehicle while under the influence of alcoholic beverages or narcotic drugs, as denounced by R.S. 14:26, and such proceedings having been disposed of by nolle prosequi, acquittal, or dismissal, may make a written motion to the clerk of court of the court of record to have the record of arrest destroyed, whether the arrest

record is on file in the records of the clerk of court or on file with a police department, sheriff's office, or any other such official agency empowered to arrest.

B. Any criminal court of record in which there was a nolle prosequi, an acquittal, or dismissal of a crime set forth above shall at the time of discharge of a person from its control, enter an order annulling, cancelling, or rescinding the record of arrest, and disposition, and further ordering the destruction of the arrest record and order of disposition. Upon the entry of such an order the person against whom the arrest has been entered shall be restored to all civil rights lost or suspended by virtue of the arrest, unless otherwise provided in this section, and shall be treated in all respects as not having been arrested.

C. Notwithstanding any other provision of this section to the contrary, the provisions of this section shall in no case be construed to effect in any way whatsoever the practices and procedures in effect on July 29, 1970, relating to the administration of the implied consent law.

D. Whoever violates any provisions of this section shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment of not more than ninety days, or both, if the conviction is for a first violation; second and subsequent violations shall be punished by a fine of not more than five hundred dollars or imprisonment of six months, or both.

Added by Acts 1970, No. 445, § 1. Amended by Acts 1972, No. 715, H 2, 3; Acts 1974, No. 531, § 1.

§ 10. Confidential nature of documents and proceedings of judiciary commission

All documents filed with, and evidence and proceedings before the judiciary commission are confidential. The record filed by the commission with the supreme court and proceedings before the supreme court are not confidential. Added by Acts 1975, No. 55, § 1.

§ 31. Right to examine records

The right to examine, copy, photograph and take memoranda of any and all public records, except as otherwise provided in this Chapter, may be exercised by:

- (1) Any elector of the state.
- (2) Any taxpayer who has paid any tax collected by or under the authority of the state if payment was made within one year from the date the taxpayer applies to exercise the right.
- (3) Any duly authorized agent of paragraphs (1) and (2) above.

§ 32. Duty to permit examination; prevention of alteration; payment for overtime

All persons having custody or control of any public record shall present it to any person who is authorized by the provisions of this Chapter and who applies during the regular office hours or working hours of the person to whom the application is made. The persons in custody or control of a public record shall make no inquiry of any person authorized by this Chapter who applies for a public record, beyond the purpose of establishing his authority; and shall not review nor examine or scrutinize any copy, photograph or memoranda in the possession of any authorized person; and shall give, grant and extend to the authorized persons all reasonable comfort and facility for the full exercise of the right granted by this Chapter; provided, that nothing herein contained shall prevent the lawful custodian of a record from maintaining such vigilance as is required to prevent alteration of any such record while same is being examined by a person under the authority of this section; and provided further, that notwithstanding the requirements contained hereinabove, examinations of records under the authority of this section must be conducted during regular office or working hours. If the chief of the office or the person next in authority among those present in the office shall authorize examination of records in other than regular office or working hours, the persons designated to represent the lawful custodian of such record during such examinations shall be entitled to reasonable compensation to be paid to them by the office, agency or department having lawful custody of such record, out of funds provided in advance by the person examining such record in other than regular office or working hours.

Amended by Acts 1968, No. 473, § 1.

§ 33. Availability of records

If the public record applied for is immediately available, because of its not being in active use at the time of the application, the public record shall be immediately presented to the authorized person applying for it. If the public record applied for is not immediately available, because of its being in active use at the time of the application, then the chief of the office, or the person next in authority among those present, shall promptly certify this in writing to the applicant, and in his certificate shall fix a day and hour within three days for the exercise of the right granted by this Chapter.

The fact that the public records are being audited shall in no case be construed as a reason or justification for a refusal to allow inspection of the records except when the public records are in active use by the auditor.

§ 34. Absence of records

If any public record applied for by any authorized person is not in the custody or control of the person to whom the application is made, such person shall promptly certify this in writing to the applicant, and shall in the certificate state in detail to the best of his knowledge and belief, the reason for the absence of the record from his custody or control, its location, what person then has custody of the record and the manner and method in which, and the exact time at which it was taken from his custody or control. He shall include in the certificate ample and detailed answers to all inquiries of the applicant that may facilitate the exercise of the right granted by this Chapter.

§ 35. Suits to enforce provisions; preference

Any suit brought in any court of original jurisdiction to enforce the provisions of this Chapter shall be tried by preference and in a summary manner. All appellate courts to which the suits are brought shall place them on its preferential docket and shall hear them without delay. The appellate courts shall also render a decision in these suits within ten days after hearing them.

§ 36. Preservation of records

All persons having custody or control of any public record, other than conveyance, probate, mortgage or other permanent record required by existing law to be kept for all time, shall exercise diligence and care in preserving the public record for a period of at least six years from the date on which the public record was made. However, where copies of an original record exist, the original alone shall be kept. When only duplicate copies of a record exist, only one copy of the duplicate copies need be kept.

All existing records or records hereafter accumulated by the department of revenue may be destroyed after five years from the thirty-first day of December of the year in which the tax to which the records pertain became due; provided that these records shall not be destroyed in any case where there is a contest relative to the payment of taxes or where a claim has been made for a refund or where litigation with reference thereto is pending. As amended Acts 1954, No. 473, § 1.

§ 40. Additional copies of records by microphotographic process; purchase of equipment; funds available for payment

A. The several clerks of court and ex officio recorders and registers of conveyances and recorders of mortgages, throughout the state, are hereby authorized at their option to make additional copies, by means of the microphotographic process, of all original acts and/or records thereof, including criminal records, of every nature and kind in their custody by virtue of their various official capacities as such clerks of court and ex officio recorders and registers of conveyances and recorders of mortgages, filed or recorded in their offices prior to July 20, 1964 and subsequent thereto.

B. Such clerks of court and ex officio recorders and registers are hereby authorized to purchase the necessary microphotographic equipment and equipment used to retrieve from storage microfilm copies, to lease such equipment or to contract with competent independent contractors, or both, according to the discretion of said clerks of court and ex officio recorders and registers, to cause the records described in this section to be copied and reproduced by means of the microphotographic process.

C. Each such clerk of court and ex officio recorder and register is hereby authorized to defray the cost of copying, reproducing and retrieving the records described in this section, including the cost of microphotographic and retrieval equipment and services, out of any funds available in the clerk's salary fund.

D. In the parish of Orleans the judges of the civil district court and the criminal district court, and in the remainder of the state the respective police juries or other governing authorities of the several parishes, are authorized to provide the necessary funds, when such funds are not already available, to enable said clerk of courts and ex officio recorders and registers to carry out the provisions of this section.

E. The several clerks of court, including the clerk of the criminal district court in the parish of Orleans, shall make and retain in their custody a copy, by means of the microphotographic process, of all original criminal records of every nature and kind which have been in their custody for a period of five or more years. Said clerks of court may destroy such original criminal records which have been in their custody for a period of five or more years and which have been copied and retained by means of the microphotographic process.

Acts 1968, No. 350, §§ 1 to 4. Amended by Acts 1964, No. 415, § 1; Acts 1972, No. 498, §§ 1, 2.

MAINE Revised Statutes Annotated
1976-1977 Cumulative Pocket Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Volume 2-Title 1

§ 408. Public records available for public inspection

Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; provided that, whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the record sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy.

§ 409. Appeals

1. **Records.** If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 10 days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 10 days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

2. **Actions.** If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all

other actions except writs of habeas corpus or actions brought by the State against individuals.

3. **Proceedings not exclusive.** The proceedings authorized by this section shall not be exclusive of any other civil remedy provided by law.
1975, c. 758.

Derivation:

1975, c. 423, § 5.
Former §§ 406-B, 406-C of this Title.

§ 410. Violations

A willful violation of any requirement of this subchapter is a Class E crime.
1975, c. 758.

Annotated Code of MARYLAND

Freedom of Information (Open Records)
 Right to Inspect Records
 Volume 7A-Article 76A



Maryland
 Regular Session
 1978 New Laws Page 2117

MARYLAND
 Regular Session

Chapter 1006, Laws 1978

House Bill No. 1326

| | |
|--|----|
| AN ACT concerning | 50 |
| Public Information Act | 53 |
| FOR the purpose of eliminating unnecessary definitions; | 57 |
| adding and revising definitions; providing a policy | 58 |
| statement; allowing directing providing that State and | |
| local governments to <u>may</u> maintain only necessary and | 59 |
| relevant information about persons under certain | 60 |
| conditions; providing greater access in certain | |
| circumstances to investigative, intelligence, and | 61 |
| security records; generally revising the provisions | 62 |
| relating to the right to inspect public records; making | |
| changes in the provisions permitting denial of public | 63 |
| records or any portion thereof; providing an | 64 |
| administrative review; providing for judicial | |
| enforcement; creating civil liability for violations; | 65 |
| providing for appropriate personnel disciplinary | 66 |
| action; providing for the removal of the subsections | |
| allowing special treatment of public records in Harford | 67 |
| County; providing for statutory limitation on the right | 68 |
| to bring an action; and clarifying language. | |
| BY repealing and reenacting, with amendments, | 70 |

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
 [Brackets] indicate matter deleted from existing law.
 Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

| | |
|--|-----|
| Article 76A - Public Information | 73 |
| Section 1 through 5, inclusive | 75 |
| Annotated Code of Maryland | 77 |
| (1975 Replacement Volume and 1977 Supplement) | 78 |
| BY adding to | 80 |
| Article 76A - Public Information | 83 |
| Section 1A | 85 |
| Annotated Code of Maryland | 87 |
| (1975 Replacement Volume and 1977 Supplement) | 88 |
| BY adding to | 90 |
| Article - Courts and Judicial Proceedings | 93 |
| Section 5-110 | 95 |
| Annotated Code of Maryland | 97 |
| (1974 Volume and 1977 Supplement) | 98 |
| SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF | 101 |
| MARYLAND, That section(s) of the Annotated Code of Maryland | 102 |
| be repealed, amended, or enacted to read as follows: | |
| Article 76A - Public Information | 105 |
| 1. | 108 |
| [As used in this article:] | 110 |
| (A) IN THIS ARTICLE THE FOLLOWING WORDS HAVE THE | 113 |
| MEANINGS INDICATED. | |
| [(a) The term "public" (B) "PUBLIC records" when not | 115 |
| otherwise specified shall include any paper, correspondence, | 116 |
| form, book, photograph, photostat, film, microfilm, sound | 117 |
| recording, map, drawing, or other WRITTEN document, | |
| regardless of physical form or characteristics, and | 118 |
| including all copies thereof, that have been made by [the] | 119 |
| ANY BRANCH OF THE State [and any counties, municipalities | 120 |
| and] GOVERNMENT, INCLUDING THE LEGISLATIVE, JUDICIAL, AND | 121 |
| EXECUTIVE BRANCHES, BY ANY BRANCH OF A political | |
| [subdivisions] SUBDIVISION, [thereof] and by any [agencies] | 122 |
| AGENCY OR INSTRUMENTALITY of the State[, counties, | 123 |
| municipalities, and] OR A political [subdivisions thereof] | |
| SUBDIVISION, or received by them in connection with the | 124 |
| transaction of public business[, except those privileged or | 125 |
| confidential by law]. The term "public records" also | 127 |
| includes the salaries of all [State] employees OF THE STATE, | 128 |
| OF A POLITICAL SUBDIVISION, AND ANY AGENCY OR | 129 |
| INSTRUMENTALITY THEREOF, both in the classified and | |
| nonclassified service[, and all county and municipal | 130 |
| employees, whether in a classified or nonclassified | 131 |
| service]. | |

| | |
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| [(b) Public records shall be classified as follows: | 133 |
| (i) The term "official public records" shall | 135 |
| include all original vouchers, receipts, and other documents | 136 |
| necessary to isolate and prove the validity of every | 137 |
| transaction relating to the receipt, use, and disposition of | |
| all public property and public income from all sources | 138 |
| whatsoever; all agreements and contracts to which the State | 139 |
| or any agency or subdivision thereof may be a party; all | 140 |
| fidelity, surety, and performance bonds; all claims filed | |
| against the State or any agency or subdivisions thereof; all | 141 |
| records or documents required by law to be filed with or | 142 |
| kept by any agency or the State; | |
| (ii) The term "office files and memoranda" shall | 144 |
| include all records, correspondence, exhibits, books, | 145 |
| booklets, drawings, maps, blank forms, or documents not | 146 |
| above defined and classified as official public records; all | 147 |
| duplicate copies of official public records filed with any | |
| agency of the State or subdivision thereof; all documents | 148 |
| and reports made for the internal administration of the | 149 |
| office to which they pertain but not required by law to be | 150 |
| filed or kept with such agency; and all other documents or | |
| records, determined by the records committee to be office | 151 |
| files and memoranda.] | |
| (C) "APPLICANT" MEANS AND INCLUDES ANY PERSON | 153 |
| REQUESTING DISCLOSURE OF PUBLIC RECORDS. | 154 |
| [(c) The term "writings"] (D) "WRITTEN DOCUMENTS" | 156 |
| means and includes all books, papers, maps, photographs, | 157 |
| cards, tapes, recordings, COMPUTERIZED RECORDS, or other | 158 |
| documentary materials, regardless of physical form or | 159 |
| characteristics. | |
| [(d) The term "political"] (E) "POLITICAL subdivision" | 161 |
| means and includes every county, city and county, city, | 162 |
| incorporated and unincorporated town, school district, and | 163 |
| special district within the State. | |
| [(e) The term "official"] (F) "OFFICIAL custodian" | 165 |
| means and includes [any] EACH AND EVERY officer or employee | 166 |
| of the State or any agency, institution, or political | 167 |
| subdivision thereof, who is responsible for the maintenance, | 168 |
| care, and keeping of public records, regardless of whether | |
| such records are in his actual personal custody and control. | 169 |
| [(f) The term "custodian"] (G) "CUSTODIAN" means and | 171 |
| includes the official custodian or any authorized person | 172 |
| having personal custody and control of the public records in | 173 |
| question. | |
| [(g) The term "person"] (H) "PERSON" means and | 175 |
| includes any natural person, corporation, partnership, firm | 176 |
| [or], association, OR GOVERNMENTAL AGENCY. | |

[1] The term "person" (1) "PERSON in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative.

11.

THE STATE, COUNTIES, MUNICIPALITIES, AND POLITICAL SUBDIVISIONS, OR ANY AGENCIES THEREOF, ~~SHALL SHOULD MAY~~ MAINTAIN ONLY SUCH INFORMATION ABOUT A PERSON AS IS RELEVANT AND NECESSARY TO ACCOMPLISH A PURPOSE OF THE GOVERNMENTAL ENTITY OR AGENCY WHICH IS AUTHORIZED OR REQUIRED TO BE ACCOMPLISHED BY STATUTE, EXECUTIVE ORDER OF THE GOVERNOR OR THE CHIEF EXECUTIVE OF A LOCAL JURISDICTION, JUDICIAL RULE, OR OTHER LEGISLATIVE MANDATE. MOREOVER, ALL PERSONS ARE ENTITLED TO INFORMATION REGARDING THE AFFAIRS OF GOVERNMENT AND THE OFFICIAL ACTS OF THOSE WHO REPRESENT THEM AS PUBLIC OFFICIALS AND EMPLOYEES. TO THIS END, THE PROVISIONS OF THIS ACT SHALL BE CONSTRUED IN EVERY INSTANCE WITH THE VIEW TOWARD PUBLIC ACCESS, UNLESS AN UNWARRANTED INVASION OF THE PRIVACY OF A PERSON IN INTEREST WOULD RESULT THEREFROM, AND THE MINIMIZATION OF COSTS AND TIME DELAYS TO PERSONS REQUESTING INFORMATION.

2.

(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law[, but the]. THE official custodian of any public [records may] RECORD SHALL make AND PUBLISH such rules and regulations with reference to the TIMELY inspection AND PRODUCTION of such [records] RECORD as shall be reasonably necessary for the protection of such [records] RECORD and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom WRITTEN application is made, such person shall, [forthwith] WITHIN TEN WORKING DAYS OF THE RECEIPT OF THE REQUEST, notify the applicant of this fact AND IF KNOWN, THE CUSTODIAN OF THE RECORD AND THE LOCATION OR POSSIBLE LOCATION THEREOF.

(c) If the public records requested are in the custody and control of the person to whom WRITTEN application is made but are [in active use or in storage] NOT IMMEDIATELY AVAILABLE, [and therefore not available at the time an applicant asks to examine them,] the custodian shall, [forthwith] WITHIN TEN WORKING DAYS OF THE RECEIPT OF THE REQUEST, notify the applicant of this fact and shall set forth a date and hour within a reasonable time at which time the record will be available for the exercise of the right given by this article.

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|---|---|
| [(d) All written documents presented to the County Commissioners of Harford County shall be open and available to the press and to the public of Harford County. The attorney for the county and the county director of public information shall disclose the contents of any document publicly presented to either of them upon the demand of any citizen of Harford County. | 230 231 232 233 234 235 |
| (e)] (D) In Charles County, except for records kept by officials, agencies, or departments of the State of Maryland, public information shall be regulated by § 6 of this article. | 237 238 239 |
| 3. | 241 |
| (a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (c) of this section: | 243 244 245 246 |
| (i) Such inspection would be contrary to any State statute; | 248 |
| (ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; [or] | 250 251 |
| (iii) Such inspection is prohibited by rules promulgated by the Court of Appeals, or by the order of any court of record[.]; OR | 253 254 |
| (IV) SUCH PUBLIC RECORDS ARE PRIVILEGED OR CONFIDENTIAL BY LAW. | 256 |
| (b) The custodian may deny the right of inspection of the following records OR APPROPRIATE PORTIONS THEREOF, unless otherwise provided by law, [on the ground that] IF disclosure to the applicant would be contrary to the public interest[;]: | 258 259 260 261 |
| (i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, STATE'S ATTORNEY, the Attorney General, police department, or any investigatory files compiled for any other law-enforcement, JUDICIAL, CORRECTIONAL, or prosecution purposes[;], BUT THE RIGHT OF A PERSON OF <u>IN</u> INTEREST TO INSPECT THE RECORDS MAY BE DENIED ONLY TO THE EXTENT THAT THE PRODUCTION OF THEM WOULD (A) INTERFERE WITH VALID AND PROPER LAW-ENFORCEMENT PROCEEDINGS, (B) DEPRIVE ANOTHER PERSON OF A RIGHT TO A FAIR TRIAL OR AN IMPARTIAL ADJUDICATION, (C) CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY, (D) DISCLOSE THE IDENTITY OF A CONFIDENTIAL SOURCE, (E) DISCLOSE INVESTIGATIVE TECHNIQUES AND PROCEDURES, OR (F) <u>(F) PREJUDICE</u> | 263 264 265 266 267 268 269 270 271 272 273 |

| | |
|---|---|
| <u>ANY INVESTIGATION, OR (G) ENDANGER THE LIFE OR PHYSICAL SAFETY OF LAW ENFORCEMENT PERSONNEL ANY PERSON;</u> | 274 275 |
| (ii) Test questions, scoring keys, and other examination data pertaining to administration of [a licensing examination, for] LICENSES OR employment or academic [examination] EXAMINATIONS; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination; | 277 278 279 280 281 282 |
| (iii) The specific details of bona fide research projects being conducted by [a State] AN institution OF THE STATE OR A POLITICAL SUBDIVISION, EXCEPT THAT THE NAME, TITLE, EXPENDITURES, AND THE TIME WHEN THE FINAL PROJECT SUMMARY SHALL BE AVAILAELE; | 284 285 286 287 |
| (iv) The contents of real estate appraisals made for the State or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the State or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by statute. | 289 290 291 292 293 294 295 |
| (v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency. | 297 298 |
| (c) The custodian shall deny the right of inspection of the following records OR ANY PORTION THEREOF, unless otherwise provided by law: | 300 301 |
| (i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports; | 303 304 |
| (ii) Adoption records or welfare records on individual persons; | 306 |
| (iii) Personnel files except that such files shall be available to the PERSON IN INTEREST, AND THE duly elected and appointed officials who supervise the work of the person in interest--. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work--}; | 308 309 310 311 312 313 |
| --(iv) Letters of reference;--} | 315 |
| [(v)] (IV) Trade secrets, [privileged] information PRIVILEGED BY LAW, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person; | 317 318 319 |

[(vi)] (V) Library, archives, and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contribution; [and]

[(vii)] (VI) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

[(viii)] (VII) School district records containing information relating to the biography, family, physiology, religion, academic achievement, and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him[.]; AND

[(ix)] (VIII) Circulation records maintained by public libraries showing personal transactions by those borrowing from them.

(d) [If] WHENEVER the custodian denies A WRITTEN REQUEST FOR access to any public record OR ANY PORTION THEREOF UNDER THIS SECTION, THE CUSTODIAN SHALL PROVIDE the applicant [may request] WITH a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied[,] AND ALL REMEDIES FOR REVIEW OF THIS DENIAL AVAILABLE UNDER THIS ARTICLE. [and it] THE STATEMENT shall be furnished [forthwith] to the applicant WITHIN TEN WORKING DAYS OF DENIAL. IN ADDITION, ANY REASONABLY SEVERABLE PORTION OF A RECORD SHALL BE PROVIDED TO ANY PERSON REQUESTING SUCH RECORD AFTER DELETION OF THOSE PORTIONS WHICH MAY BE WITHHELD FROM DISCLOSURE.

[(e) Any person denied the right to inspect any record covered by this article may apply to the circuit court of the county where the record is found for any order directing the custodian of such record to show cause why he should not permit the inspection of such record.]

[(f)] (E) If, in the opinion of the official custodian of any public record WHICH IS OTHERWISE REQUIRED TO BE DISCLOSED UNDER THIS ARTICLE, disclosure of the contents of said record would do substantial injury to the public interest, [notwithstanding the fact that said record might otherwise be available to public inspection, he may apply] THE OFFICIAL CUSTODIAN MAY TEMPORARILY DENY DISCLOSURE PENDING A COURT DETERMINATION OF WHETHER DISCLOSURE WOULD DO SUBSTANTIAL INJURY TO THE PUBLIC INTEREST PROVIDED THAT, WITHIN TEN WORKING DAYS OF THE DENIAL THE OFFICIAL CUSTODIAN APPLIES to the circuit court of the county where the record is located OR WHERE HE MAINTAINS HIS PRINCIPAL OFFICE for an order permitting him

to CONTINUE TO DENY OR restrict such disclosure. THE 366
 FAILURE OF THE OFFICIAL CUSTODIAN TO APPLY FOR A COURT 367
 DETERMINATION FOLLOWING A TEMPORARY DENIAL OF INSPECTION 368
 WILL RESULT IN HIS BECOMING SUBJECT TO THE SANCTIONS 369
 PROVIDED IN THIS ARTICLE FOR FAILURE TO DISCLOSE AUTHORIZED 370
 PUBLIC RECORDS REQUIRED TO BE DISCLOSED. After hearing, the 371
 court may issue such an order upon a finding that disclosure 372
 would cause substantial injury to the public interest. The 373
 person seeking permission to examine the record shall have 374
 notice of [said hearing] THE APPLICATION SENT TO THE CIRCUIT 375
 COURT served upon him in the manner provided for service of 376
 process by the MARYLAND Rules of Procedure and shall have 377
 the right to appear and be heard. 378

4. 379

(a) In all cases in which a person has the right to 380
 inspect any public records [he may request that he] SUCH 381
 PERSON SHALL HAVE THE RIGHT TO be furnished copies, 382
 printouts, or photographs for a reasonable fee to be set by 383
 the official custodian. Where fees for certified copies or 384
 other copies, printouts, or photographs of such record are 385
 specifically prescribed by law, such specific fees shall 386
 apply. 387

(b) If the custodian does not have the facilities for 388
 making copies, printouts, or photographs of records which 389
 the applicant has the right to inspect, then the applicant 390
 shall be granted access to the records for the purpose of 391
 making copies, printouts, or photographs. The copies, 392
 printouts, or photographs shall be made while the records 393
 are in the possession, custody, and control of the custodian 394
 thereof and shall be subject to the supervision of such 395
 custodian. When practical, they shall be made in the place 396
 where the records are kept, but if it is impractical to do 397
 so, the custodian may allow arrangements to be made for this 398
 purpose. If other facilities are necessary the cost of 399
 providing them shall be paid by the person desiring a copy, 400
 printout, or photograph of the records. The official 401
 custodian may establish a reasonable schedule of times for 402
 making copies, printouts, or photographs and may charge a 403
 reasonable fee for the services rendered by him or his 404
 deputy in supervising the copying, printingout, or 405
 photographing as he may charge for furnishing copies under 406
 this section. 407

5. 408

(A) EXCEPT IN CASES OF TEMPORARY DENIALS UNDER 409
 SECTION 3(E) OF THIS SUBTITLE ANY APPLICANT DENIED THE RIGHT 410
 TO INSPECT PUBLIC RECORDS WHERE THE OFFICIAL CUSTODIAN OF 411
 THE RECORDS IS AN AGENCY SUBJECT TO THE PROVISIONS OF 412
 SUBTITLE 24 OF ARTICLE 41 OF THIS CODE MAY ASK FOR AN 413
 ADMINISTRATIVE REVIEW OF THIS DECISION IN ACCORDANCE WITH 414
 SECTION 251 THROUGH 254 OF ARTICLE 41 OF THIS CODE, HOWEVER, 415
 THIS REMEDY NEED NOT BE EXHAUSTED PRIOR TO FILING SUIT IN 416
 THE CIRCUIT COURT PURSUANT TO THIS ARTICLE. 417

(B) (1) ON COMPLAINT OF ANY PERSON DENIED THE RIGHT TO INSPECT ANY RECORD COVERED BY THIS ARTICLE, THE CIRCUIT COURT IN THE JURISDICTION IN WHICH THE COMPLAINANT RESIDES, OR HAS HIS PRINCIPAL PLACE OF BUSINESS, OR IN WHICH THE RECORDS ARE SITUATED, HAS JURISDICTION TO ENJOIN THE STATE, ANY COUNTY, MUNICIPALITY, OR POLITICAL SUBDIVISION, OR ANY AGENCY, OFFICIAL OR EMPLOYEE THEREOF, FROM WITHHOLDING RECORDS AND TO ORDER THE PRODUCTION OF ANY RECORDS IMPROPERLY WITHHELD FROM THE COMPLAINANT. IN SUCH A CASE, THE COURT MAY EXAMINE THE CONTENTS OF THE RECORDS IN CAMERA TO DETERMINE WHETHER THE RECORDS OR ANY PART THEREOF MAY BE WITHHELD UNDER ANY OF THE EXEMPTIONS SET FORTH IN SECTION 3, AND THE BURDEN IS ON THE DEFENDANT TO SUSTAIN ITS ACTION. IN CARRYING THIS BURDEN THE DEFENDANT MAY SUBMIT TO THE COURT FOR REVIEW A MEMORANDUM JUSTIFYING THE WITHHOLDING OF THE RECORDS.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DEFENDANT SHALL SERVE AN ANSWER OR OTHERWISE PLEAD TO ANY COMPLAINT MADE UNDER THIS SUBSECTION WITHIN 30 DAYS AFTER SERVICE UPON THE DEFENDANT OF THE PLEADING IN WHICH THE COMPLAINT IS MADE, UNLESS THE COURT OTHERWISE DIRECTS FOR GOOD CAUSE SHOWN.

(3) EXCEPT AS TO CASES THE COURT CONSIDERS OF GREATER IMPORTANCE, PROCEEDINGS BEFORE THE COURT, AS AUTHORIZED BY THIS SECTION, AND APPEALS THEREFROM SHALL TAKE PRECEDENCE ON THE DOCKET OVER ALL OTHER CASES AND SHALL BE HEARD AT THE EARLIEST PRACTICABLE DATE AND EXPEDITED IN EVERY WAY.

(4) IN ADDITION TO ANY OTHER RELIEF WHICH MAY BE GRANTED TO A COMPLAINANT, IN ANY SUIT BROUGHT UNDER THE PROVISIONS OF THIS SECTION IN WHICH THE COURT DETERMINES THAT THE DEFENDANT HAS KNOWINGLY AND WILFULLY FAILED TO DISCLOSE OR FULLY DISCLOSE RECORDS AND INFORMATION TO ANY PERSON WHO, UNDER THIS ARTICLE, IS ENTITLED TO RECEIVE IT, AND THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE PERSON WAS ENTITLED TO RECEIVE IT, ~~THE DEFENDANT JURISDICTION ANY DEFENDANT GOVERNMENTAL ENTITY OR ENTITIES SHALL BE LIABLE TO THE COMPLAINANT IN AN AMOUNT EQUAL TO THE SUM OF THE ACTUAL DAMAGES SUSTAINED BY THE INDIVIDUAL AS A RESULT OF THE REFUSAL OR FAILURE, AND IN NO CASE SHALL A PERSON BE ENTITLED TO RECOVERY LESS THAN THE SUM OF \$1,000 AND SUCH PUNITIVE DAMAGES AS THE COURT DEEMS APPROPRIATE.~~

(5) IN THE EVENT OF NONCOMPLIANCE WITH AN ORDER OF THE COURT, THE COURT MAY PUNISH THE RESPONSIBLE EMPLOYEE FOR CONTEMPT.

(6) ~~THE COURT MAY ASSESS AGAINST THE DEFENDANT JURISDICTION ANY DEFENDANT GOVERNMENTAL ENTITY OR ENTITIES~~ REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS REASONABLY INCURRED IN ANY CASE UNDER THIS SECTION IN WHICH THE COURT DETERMINES THAT THE APPLICANT HAS SUBSTANTIALLY PREVAILLED.

(C) WHENEVER THE COURT ORDERS THE PRODUCTION OF ANY
 RECORDS IMPROPERLY WITHHELD FROM THE APPLICANT, AND IN
 ADDITION, FINDS THAT THE CUSTODIAN ACTED ARBITRARILY OR
 CAPRICIOUSLY IN WITHHOLDING THE PUBLIC RECORD, THE COURT
 SHALL FORWARD A CERTIFIED COPY OF ITS FINDING TO THE
 APPOINTING AUTHORITY OF THE CUSTODIAN. UPON RECEIPT
 THEREOF, THE APPOINTING AUTHORITY SHALL, AFTER APPROPRIATE
 INVESTIGATION, TAKE SUCH DISCIPLINARY ACTION AS IS WARRANTED
 UNDER THE CIRCUMSTANCES.

(D) Any person who [willfully] WILFULLY and knowingly
 violates the provisions of this article shall be guilty of a
 misdemeanor and, upon conviction thereof, shall be punished
 by a fine not to exceed [one hundred dollars (\$100.00)]
 \$100.

Article - Courts and Judicial Proceedings 472

5-110. 475

AN ACTION TO ENFORCE ANY CRIMINAL OR CIVIL LIABILITY
 CREATED UNDER SECTIONS 1 THROUGH 5 OF ARTICLE 76A OF THIS
 CODE MAY BE BROUGHT WITHIN TWO YEARS FROM THE DATE ON WHICH
 THE CAUSE OF ACTION ARISES, EXCEPT THAT IF THE DEFENDANT HAS
 MATERIALLY AND WILFULLY MISREPRESENTED ANY INFORMATION
 REQUIRED UNDER THOSE SECTIONS TO BE DISCLOSED TO A PERSON
 AND THE INFORMATION SO MISREPRESENTED IS MATERIAL TO THE
 ESTABLISHMENT OF LIABILITY OF THE DEFENDANT TO THE PERSON
 UNDER THOSE SECTIONS, THE ACTION MAY BE BROUGHT AT ANY TIME
 WITHIN TWO YEARS AFTER DISCOVERY BY THE PERSON OF THE
 MISREPRESENTATION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act 488
 shall take effect July 1, 1978. 489

Approved, May 29, 1978

MASSACHUSETTS General Laws Annotated
1976-1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Volume 8A-Chapter 66-A

§ 3. "Record", defined; quality of paper and film; microfilm records

The word "record" in this chapter shall mean any written or printed book or paper, or any photograph, microphotograph, map or plan. All written or printed public records shall be entered or recorded on paper made of linen rags and new cotton clippings, well sized with animal sizing and well finished, or on one hundred per cent bond paper sized with animal glue or gelatin, and preference shall be given to paper of American manufacture marked in water line with the name of the manufacturer. All photographs, microphotographs, maps and plans which are public records shall be made of materials approved by the supervisor of records. Public records may be made by handwriting, or by typewriting, or in print, or by the photographic process, or by the microphotographic process, or by any combination of the same. When the photographic or microphotographic process is used, the recording officer, in all instances where the photographic print or microphotographic film is illegible or indistinct, may make, in addition to said photographic or microphotographic record, a typewritten copy of the instrument, which copy shall be filed in a book kept for the purpose. In every such instance the recording officer shall cause cross references to be made between said photographic or microphotographic record and said typewritten record. If in the judgment of the recording officer an instrument offered for record is so illegible that a photographic or microphotographic record thereof would not be sufficiently legible, he may, in addition to the making of such record, retain the original in his custody, in which case a photographic or other attested copy thereof shall be given to the person offering the same for record, or to such person as he may designate.

Amended by St.1975, c. 282.

§ 10. Public inspection of records; fee for copy; search expense; request, compliance; mandamus; presumption and burden of proof

(a) Every person having custody of any public records, as defined in clause twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit them to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof on payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search.

(b) A custodian of a public record shall, within twenty days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail, registered, return receipt requested. If the custodian refuses or fails to comply with such request as hereinafter provided, the supreme judicial or superior court shall have jurisdiction in mandamus, pursuant to section five of chapter two hundred and forty-nine, to order compliance with the request made under this section.

(c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

Amended by St.1973, c. 1050, § 3.

§ 16. Surrender of church records; jurisdiction of superior court

If a church, parish, religious society, monthly meeting of the people called Friends or Quakers, or any similar body of persons who have associated themselves together for holding religious meetings, shall cease for the term of two years to hold such meetings, the persons having the care of any records or registries of such body, or of any officers thereof, shall deliver all such records, except records essential to the control of any property or trust funds belonging to such body, to the custodian of a depository provided by the state organization of the particular de-

nomination or to the clerk of the city or town where such body is situated and such clerk may certify copies thereof upon the payment of the fee as provided by clause (25) of section thirty-four of chapter two hundred and sixty-two. If any such body, the records or registries of which, or of any officers of which, have been so delivered, shall resume meetings under its former name or shall be legally incorporated, either alone or with a similar body, the clerk of such city or town or the custodian of said depository shall, upon written demand by a person duly authorized, deliver such records or registries to him if he shall in writing certify that to the best of his knowledge and belief said meetings are to be continued or such incorporation has been legally completed. The superior court shall have jurisdiction in equity to enforce this section.

Amended by St.1970, c. 30.

§ 17A. Public assistance records; public inspection; destruction

The records of the department of public welfare relative to all public assistance, and the records of the commission for the blind relative to aid to the blind, shall be public records; provided that they shall be open to inspection only by public officials of the commonwealth, which term shall include members of the general court, representatives of the federal government and those responsible for the preparation of annual budgets for such public assistance, the making or recommendations relative to such budgets, or the approval or authorization of payments for such assistance, or for any purposes directly connected with the administration of such public assistance; and provided, further, that information relative to the record of an applicant for public assistance or a recipient thereof may be disclosed to him or his duly authorized agent. The commonwealth shall destroy public assistance records ten years after the discontinuance of aid granted under the provisions of chapters sixty-nine, one hundred and seventeen, one hundred and eighteen, one hundred and eighteen A, one hundred and eighteen D and one hundred and nineteen, in such manner as the commissioner or director may prescribe.

Amended by St.1969, c. 885, § 27.

§ 17C. Failure to maintain public records of meetings; orders to maintain

Upon proof of failure of a governmental body as defined in section eleven A of chapter thirty A, section nine F of chapter thirty-four and section twenty-three A of chapter thirty-nine, or by any member or officer thereof to carry out any of the provisions prescribed by this chapter for maintaining public records, a justice of the supreme judicial or the superior court sitting within and for the county in which such governmental body acts or, in the case of a governmental body of the commonwealth, sitting within and for any county, shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out the provisions of this chapter. Such order may be sought by petition of three or more registered voters, by the attorney general, or by the district attorney for the district in which the governmental body acts. The order of notice on the petition shall

be returnable no later than ten days after the filing thereof and the petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the petition without notice when such order is necessary to fulfill the purposes of this section. In the hearing of any such petition the burden shall be on the respondent to show by a preponderance of the evidence that the actions complained of in such petition were in accordance with and authorized by section eleven B of chapter thirty, by section nine G of chapter thirty-four or by section twenty-three B. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Any such order may also, when appropriate, require the records of any such meeting of a governmental body to be made a public record unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized by section eleven B of chapter thirty, by section nine G of chapter thirty-four or by section twenty-three B. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy.

MICHIGAN Compiled Laws Annotated
1976-1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
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Volume 39

750.492 Inspection and use of public records

Sec. 492. * * * Any officer having the custody of any county, city or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by a fine of not more than \$500.00. The custodian of said records and files may make such reasonable rules * * * with reference to the inspection and examination of them as shall be necessary for the protection of said records and files, and to prevent interference with the regular discharge of the duties of such officer. The officer shall prohibit the use of pen and ink in making copies or notes of records and files in his office. No books, records and files shall be removed from the office of the custodian thereof, * * * except by the order of the judge of any court of competent jurisdiction, or in response to a subpoena duces tecum issued therefrom, or for audit purposes conducted pursuant to Act No. 71 of the Public Acts of 1919, as amended, being sections 21.41 to 21.53 of the Compiled Laws of 1948, Act No. 52 of the Public Acts of 1929, being sections 14.141 to 14.145 of the Compiled Laws of 1948 or Act No. 2 of the Public Acts of 1968, being sections 141.421 to 141.433 of the Compiled Laws of 1948 with the permission of the official having custody of the records if the official is given a receipt listing the records being removed.

Amended by P.A.1970, No. 109, § 1, Imd. Eff. July 23.

MINNESOTA Statutes Annotated
1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Volume 3

15.17 Official records

Subdivision 1. Must be kept. All officers and agencies of the state, and all officers and agencies of the counties, cities, villages, and towns, shall make and keep all records necessary to a full and accurate knowledge of their official activities. All such public records shall be made on paper of durable quality and with the use of ink, carbon papers, and typewriter ribbons of such quality as to insure permanent records. Every public officer, and every county officer with the approval of the county board, is empowered to record or copy public records by any photographic, photostatic, microphotographic, or microfilming device, approved by the Minnesota historical society, which clearly and accurately records or copies them, and such public officer or such county officer may make and order that such photographs, photostats, microphotographs, microfilms, or other reproductions, be substituted for the originals thereof, and may direct the destruction or sale for salvage or other disposition of the originals from which the same were made. Any such photographs, photostats, microphotographs, microfilms, or other reproductions so made shall for all purposes be deemed the original recording of such papers, books, documents and records so reproduced when so ordered by any officer with the approval of the county board, and shall be admissible as evidence in all courts and proceedings of every kind. A facsimile or exemplified or certified copy of any such photograph, photostat, microphotograph, microfilm, or other reproduction, or any enlargement or reduction thereof, shall have the same effect and weight as evidence as would a certified or exemplified copy of the original.

* * *

Subd. 4. Accessible to public. Every custodian of public records shall keep them in such arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records. Except as otherwise expressly provided by law, he shall permit all public records in his custody to be inspected, examined, abstracted, or copied at reasonable times and under his supervision and regulation by any person; and he shall, upon the demand of any person, furnish certified copies thereof on payment in advance of fees not to exceed the fees prescribed by law. Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying of all public records except as otherwise expressly provided by law.

Amended by Laws 1973, c. 422, § 1.

MISSISSIPPI Code 1972 AnnotatedFreedom of Information (Open Records)
Right to Inspect Records
Volume 19**§ 89-5-25. How instrument recorded and book indexed—records public—copies.**

(1) It shall be the duty of the clerk of the chancery court to whom any written instrument is delivered to be recorded, and which is properly recordable in his county, to record the same without delay in a well bound book of good paper, to be provided

by him for that purpose, together with the acknowledgments of proofs and the certificates thereof, and also the plats of surveys, schedules, and other papers thereto annexed, by entering them word for word in a fair handwriting, or typewriting, or by filling up printed forms, or by recording by photostat machine or other equally permanent photographic process, and entering at the margin or foot of the page the hour and minute, the day of the month, and the year when the instrument was delivered to him for record, and when recorded. He shall also carefully preserve all instruments of writing, which are properly acknowledged and delivered to him to be recorded, and after recording deliver them to the party entitled thereto on demand. He shall also put a complete alphabetical index, both direct and reverse, to each book, except as provided in subsection (2), herein; and every person shall have access, at proper times, to such books, and be entitled to transcripts from the same on paying the lawful fees. He shall record the deeds and other instruments in the order of time in which they are filed for record as far as practicable.

(2) In counties having a population in excess of 119,000 with an assessed valuation of all taxable property therein in excess of \$63,000,000.00, and having two cities wholly located therein, each with a population in excess of 30,000 persons according to the preceding Federal Census, wherein the clerk of the chancery court has a well kept general index, both direct and reverse, for each kind or class of record books as required by section 89-5-33, the board of supervisors may, by order spread upon its minutes, authorize the clerk of the chancery court to omit putting such index in each separate book of the records to which such general index is kept.

(3) This section shall not be construed to authorize and empower the boards of supervisors to purchase any photostat machines or other equally permanent photographic processes.

Vernon's Annotated MISSOURI Statutes
1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Volume 8

109.180. Public records open to inspection—refusal to permit inspection, penalty

Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen. Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding ninety days, or by both the fine and the confinement. (L.1961 p. 548 § 1)

109.190. Right of person to photograph public records—regulations

In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public records, instruments or documents, any person has the right of access to the records, documents or instruments for the purpose of making photographs of them while in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The work shall be done under the supervision of the lawful custodian of the records who may adopt and enforce reasonable rules governing the work. The work shall, where possible, be done in the room where the records, documents or instruments are by law kept, but if that is impossible or impracticable, the work shall be done in another room or place as nearly adjacent to the place of custody as possible to be determined by the custodian of the records. While the work authorized herein is in progress, the lawful custodian of the records may charge the person desiring to make the photographs a reasonable rate for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done. (L.1961 p. 548 § 2)

Revised Codes of MONTANA 1947
1975 Cumulative Pocket Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Volume 7

93-1001-2. (10540) Public writings defined. Public writings are:

1. The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

2. Public records, kept in this state, of private writings.

93-1001-4. (10542) Every citizen entitled to inspect and copy public writings. Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute.

93-1001-5. (10543) Public officer bound to give copies. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

Revised Statutes of NEBRASKA 1971
1976 Cumulative Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Volume 5

84-712. Public records; free examination; memorandum and abstracts. Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

84-712.01. Public records; right of citizens; full access. Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt or other record of receipt, cash or expenditure involving public funds is involved in order that the citizens of this state shall have full rights to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

Source: Laws 1961, c. 454, § 2, p. 1383.

84-712.02. Public records; claimants before federal veterans agencies; certified copies free of charge. When it shall be requested by any claimant before the United States Veterans' Bureau or any claimant before the United States Bureau of Pensions, his or her agent or attorney, that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such bureau, the officer in charge of such public records shall furnish or cause to be furnished such claimant, his or her agent or attorney, a certified copy thereof free of charge.

84-712.03. Public records; denial of rights; remedies; violation; penalties. Any person denied any rights granted by sections 84-712 to 84-712.03 may file for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county or political subdivision officer who has custody of said public record can be served. Any official who shall violate the provisions of sections 84-712 to 84-712.03 shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding three months.

NEVADA Revised Statutes

Freedom of Information (Open Records)
Right to Inspect Records
Volume 8

IN GENERAL

239.010 Public books, records open to inspection; penalty.

1. All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, shall be open at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

[1:149:1911; RL § 3232; NCL § 5620]—(NRS A 1963, 26; 1965, 69)

239.015 Removal, transfer, storage of records authorized when necessary; copies to be provided.

1. A custodian of records may remove books of records, maps, charts, surveys and other papers for storage in an appropriate facility if he believes that the removal of such records is necessary for their protection or permanent preservation, or he may arrange for their transfer to another location for duplication or reproduction.

2. If a county recorder receives a request for a particular item which has been stored pursuant to subsection 1, he shall produce a microfilmed copy of such item or the original within 3 working days.

(Added to NRS by 1975, 748)

239.020 Certified copies of public records to be provided without charge to Veterans' Administration. Whenever a copy of any public record is required by the Veterans' Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans' Administration, the official charged with the custody of such public record shall, without charge, provide the applicant for the benefit or any person acting on his behalf or the representative of the Veterans' Administration with a certified copy or copies of such records.

[1:30:1947; 1943 NCL § 6879.15]

239.030 Furnishing of certified copies of public records. Every officer having custody of public records, the contents of which are not declared by law to be confidential, shall furnish copies certified to be correct to any person who requests them and pays or tenders such fees as may be prescribed for the service of copying and certifying.

[1:73:1909; RL § 2045; NCL § 2976]—(NRS A 1973, 353)

NEW HAMPSHIRE Revised Statutes Annotated
1975 Supplement

Freedom of Information (Open Records)
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Volume 2

91-A:4 Minutes and Records Available for Public Inspection. Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda abstracts, photographic or photostatic copies, of the records or minutes so inspected, except as otherwise prohibited by statute or section 5 of this chapter.

Source. 1967, 251:1, eff. Aug. 26, 1967.

91-A:5 Exemptions. The records of the following bodies are exempted from the provisions of this chapter:

I. Grand and petit juries.

II. Parole and pardon boards.

III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices, confidential, commercial, or financial information, personnel, medical, welfare, and other files whose disclosure would constitute invasion of privacy.

Source. 1967, 251:1, eff. Aug. 26, 1967.

91-A:7 Violation. Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. The courts shall give proceedings under this chapter priority on the court calendar.

Source. 1967, 251:1, eff. Aug. 26, 1967.

91-A:8 [New] Remedies. Any body or agency which, in violation of the provisions of this chapter, refuses to provide a public document or refuses access to a public proceeding, to a person who reasonably requests the same, shall be liable for reasonable attorney's fees and costs incurred in making the information available or the proceeding open to the public provided the court renders final judgment in favor of such request.

Source. 1973, 113:1, eff. July 7, 1973.

NEW JERSEY Statutes Annotated
1976-1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Title 47

47:1A-1. Legislative findings

The Legislature finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State, with certain exceptions, for the protection of the public interest. L.1963, c. 73, § 1.

47:1A-2. Public records; right of inspection; copies; fees

Except as otherwise provided in this act or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State or of any political subdivision thereof or by any public board, body, commission or authority created pursuant to law by the State or any of its political subdivisions, or by any official acting for or on behalf thereof (each of which is hereinafter referred to as the "custodian" thereof) shall, for the purposes of this act, be deemed to be public records. Every citizen of this State, during the regular business hours maintained by the custodian of any such records, shall have the right to inspect such records. Every citizen of this State shall also have the right, during such regular business hours and under the supervision of a representative of the custodian, to copy such records by hand, and shall also have the right to purchase copies of such records. Copies of records shall be made available upon the payment of such price as shall be established by law. If a price has not been established by law for copies of any records, the custodian of such records shall make and supply copies of such records upon the payment of the following fees which shall be based upon the total number of pages or parts thereof to be purchased without regard to the number of records being copied:

| | |
|---------------------------------------|------------------|
| First page to tenth page | \$0.50 per page, |
| Eleventh page to twentieth page | 0.25 per page, |
| All pages over 20 | 0.10 per page, |

If the custodian of any such records shall find that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business therein, he may permit any citizen who is seeking to copy more than 100 pages of records to use his own photographic process, approved by the custodian, upon the payment of a reasonable fee, considering the equipment and the time involved, to be fixed by the custodian of not less than \$5.00 or more than \$25.00 per day. L.1963, c. 73, § 2.

47:1A-3. Records of investigations in progress

Notwithstanding the provisions of this act, where it shall appear that the record or records which are sought to be examined shall pertain to an investigation in progress by any such body, agency, commission, board, authority or official, the right of examination herein provided for may be denied if the inspection, copying or publication of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to prohibit any such body, agency, commission, board, authority or official from opening such record or records for public examination if not otherwise prohibited by law. L.1963, c. 73, § 3.

47:1A-4. Proceedings to enforce right to inspect or copy

Any such citizen of this State who has been or shall have been denied for any reason the right to inspect, copy or obtain a copy of any such record as provided in this act may apply to the Superior Court of New Jersey by a proceeding in lieu of prerogative writ for an order requiring the custodian of the record to afford inspection, the right to copy or to obtain a copy thereof, as provided in this act. L.1963, c. 73, § 4.

NEW MEXICO Statutes Annotated
1975 Pocket Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Volume 10

71-5-1. Right to inspect public records—Exceptions.—Every citizen of this state has a right to inspect any public records of this state except:

- A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;
- B. letters of reference concerning employment, licensing or permits;
- C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files; and
- D. as otherwise provided by law.

71-5-2. Officers to provide opportunity and facilities for inspection.—All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose.

71-5-3. Penalties for violation of act.—If any officer having the custody of any state, county, school, city or town records in this state shall refuse to any citizen of this state the right to inspect any public records of this state, as provided in this act [71-5-1 to 71-5-3], such officer shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than two hundred and fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00), or be sentenced to not less than sixty (60) days nor more than six (6) months in jail, or both such fine and imprisonment for each separate violation.

34-2-17. Disclosure of information.—A. All certificates, applications, records, and reports made for the purpose of this act [34-2-1 to 34-2-25] to, and directly or indirectly identifying, a patient or former patient or an individual whose involuntary referral for mental health care has been sought under this act shall be kept confidential and shall not be disclosed by any person except in so far:

(1) as the individual identified or his legal guardian, if any, (or, if he is a minor, his parent or legal guardian) shall consent; or

(2) as disclosure may be necessary to carry out any of the provisions of this act; or

(3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

B. Nothing in this section shall preclude disclosure, upon proper inquiry, of information contained in such certificates, applications, records or reports, to abstractors in connection with title matters relating to title in real property in which the patient has or had some interest, or lawyers, or information as to his current medical condition to any members of the family of a patient or to his relatives or friends.

C. Any person violating any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than five hundred dollars (\$500) and imprisonment for not more than one [1] year.

5-6-23. Formation of public policy.—A. The formation of public policy or the conduct of business by vote shall not be conducted in secret.

B. All meetings of a quorum of members of any board, commission or other policy-making body of any state agency, or any agency or authority of any county, municipality, district or any political subdivision held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such board, commission or other policy-making body, are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution or the provisions of this act [5-6-23 to 5-6-26].

C. Any such meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs, and at which a majority or quorum of the body is in attendance, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice shall be reasonable when applied to such body.

D. Such minutes as may reasonably be required by the board, commission or other policy-making body shall be recorded and be open to public inspection.

E. The provisions of this section shall not apply to adjudicatory or personnel matters nor to meetings pertaining to issuance, suspension, renewal or revocation of a license, nor meetings of grand juries. Nothing in this section shall be construed to deny or permit an aggrieved person the right to demand a public hearing.

McKinney's Consolidated Laws of NEW YORK Annotated
1977-1978 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Book 46- Public Officers Law

ARTICLE 6—FREEDOM OF INFORMATION LAW [NEW]

Sec.

- 84. Legislative declaration.
- 85. Short title.
- 86. Definitions.
- 87. Access to agency records.
- 88. Access to state legislative records.
- 89. General provisions relating to access to records; certain cases.
- 90. Severability.

Former Art. 6. Renumbered 7.

§ 84. Legislative declaration

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

Added L.1977, c. 933, § 1.

§ 85. Short title

This article shall be known and may be cited as the "Freedom of Information Law."

Added L.1977, c. 933, § 1.

§ 86. Definitions

As used in this article, unless the context requires otherwise:

1. "Judiciary" means the courts of the state, including any municipal or district court, whether or not of record.

2. "State legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof.

3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.

4. "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

Added L.1977, c. 933, § 1.

§ 87. Access to agency records

1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

- i. the times and places such records are available;
- ii. the persons from whom such records may be obtained, and
- iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

- (a) are specifically exempted from disclosure by state or federal statute;
- (b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
- (c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- (d) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (e) are compiled for law enforcement purposes and which, if disclosed, would:

- i. interfere with law enforcement investigations or judicial proceedings;
- ii. deprive a person of a right to a fair trial or impartial adjudication;
- iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
- iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed would endanger the life or safety of any person;
- (g) are inter-agency or intra-agency materials which are not:
 - i. statistical or factual tabulations or data;
 - ii. instructions to staff that affect the public; or
 - iii. final agency policy or determinations; or
- (h) are examination questions or answers which are requested prior to the final administration of such questions.

3. Each agency shall maintain:

- (a) a record of the final vote of each member in every agency proceeding in which the member votes;
- (b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and
- (c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.

Added L.1977, c. 933, § 1.

§ 88. Access to state legislative records

1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, but not limited to:

- (a) the times and places such records are available;
- (b) the persons from whom such records may be obtained;
- (c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:

- (a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;
- (b) messages received from the governor or the other house of the legislature, and home rule messages;
- (c) legislative notification of the proposed adoption of rules by an agency;
- (d) members' code of ethics statements;
- (e) transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;
- (f) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;
- (g) administrative staff manuals and instructions to staff that affect members of the public;

(h) final reports and formal opinions submitted to the legislature;
 (i) final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;

(j) any other files, records, papers or documents required by law to be made available for public inspection and copying.

3. Each house shall maintain and make available for public inspection and copying: (a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes;

(b) a record setting forth the name, public office address, title, and salary of every officer or employee; and

(c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

Added L1977, c. 933, § 1.

§ 89. General provisions relating to access to records; certain cases

The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on public access to records is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and six other persons, none of whom shall hold any other state or local public office, to be appointed as follows: four by the governor, at least two of whom are or have been representatives of the news media, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The committee shall hold no less than four meetings annually. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(b) The committee shall:

i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;

ii. furnish to any person advisory opinions or other appropriate information regarding this article;

iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;

iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and

v. report on its activities and findings, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

i. disclosure of employment, medical or credit histories or personal references of applicants for employment;

ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;

iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;

iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

i. when identifying details are deleted;

ii. when the person to whom a record pertains consents in writing to disclosure;

iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date when such request will be granted or denied. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within seven business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on public access to records a copy of such appeal and the determination thereon.

(b) Any person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

5. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

Added L1977, c. 933, § 1.

§ 90. Severability

If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

Added L1977, c. 933, § 1.

General Statutes of NORTH CAROLINA
1975 Cumulative Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Volume 3B

§ 132-1. "Public records" defined. — "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government. (1935, c. 265, s. 1; 1975, c. 787, s. 1.)

§ 132-1.1. Confidential communications by legal counsel to public board or agency; not public records. — Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body. (1975, c. 662.)

§ 132-4. Disposition of records at end of official's term. — Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a misdemeanor and upon conviction imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars (\$1,000) or both. (1935, c. 265, s. 4; 1943, c. 237; 1973, c. 476, s. 48; 1975, c. 696, s. 1.)

§ 132-5. Demanding custody. — Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars (\$1,000) or both. (1935, c. 265, s. 5; 1975, c. 696, s. 2.)

§ 132-5.1. Regaining custody; civil remedies. — (a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to possess such public records may petition the Superior Court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

- (1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or
- (2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 787, s. 2.)

§ 132-9. Access to records. — Any person who is denied access to public records for purposes of inspection, examination or copying may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders. (1935, c. 265, s. 9; 1975, c. 787, s. 3.)

NORTH DAKOTA Century Code

Freedom of Information (Open Records)

Right to Inspect Records

Volume 9

44-04-18. Access to public records.—Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public.

Page's OHIO Revised Code Annotated
1975 Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Title 1: State Government

§ 149.43 Availability of public records.

As used in this section, "public record" means any record required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except records pertaining to physical or psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law.

All public records shall be open at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time.

§ 149.44 Availability of records in centers and archival institutions.

Any state records center or archival institution established pursuant to sections 149.31 and 149.331 [149.33.1] of the Revised Code is an extension of the departments, offices, and institutions of the state and all state records transferred to records centers and archival institutions shall be available for use by the originating agencies and agencies or individuals so designated by the office of origin. The state records administrator and the state archivist shall establish regulations and procedures for the operation of state records centers and archival institutions respectively.

HISTORY: 131 v 631. EF 11-1-65.

§ 149.99 Penalty.

Whoever violates section 149.43 or 149.351 [149.35.1] of the Revised Code shall forfeit not more than one hundred dollars for each offense to the state. The attorney general shall collect the same by civil action.

HISTORY: 130 v 155, § 1 (EF 9-27-63); 131 v 177. EF 11-1-65.

OKLAHOMA Statutes Annotated
1976-1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Title 51

§ 24. Records open for public inspection

It is hereby made the duty of every public official of the State of Oklahoma, and of its sub-divisions, who are required by law to keep public records pertaining to their said offices, to keep the same open for public inspection for proper purposes, at proper times and in proper manner, to the citizens and taxpayers of this State, and its sub-divisions, during all business hours of the day; provided, however, the provisions of this act shall not apply to Income Tax Returns filed with the Oklahoma Tax Commission, or other records required by law to be kept secret. Laws 1943, p. 126, § 1.

OREGON Revised Statutes

Freedom of Information (Open Records)
Right to Inspect Records

192.410 Definitions for ORS 192.410 to 192.500. As used in ORS 192.410 to 192.500:

(1) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

(3) "Person" includes any natural person, corporation, partnership, firm or association.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(5) "Writing" means handwriting, type-writing, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

[1973 c.794 §2]

192.420 Right to inspect public records. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.500.

[1973 c.794 §3]

192.430 Functions of custodian of public records. The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

[1973 c.794 §4]

192.440 Certified copies of public records; fees. (1) The custodian of any public record which a person has a right to inspect shall give him, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available.

[1973 c.794 §5]

192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying

inspection. (1) Subject to ORS 192.480, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. The burden is on the agency to sustain its action. The Attorney General shall issue his order denying or granting the petition, or denying it in part and granting it in part, within three business days from the day he receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if he grants the petition in part and orders the state agency to disclose a portion of the record, the state agency may institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by him that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with his order requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.

[1973 c.794 §4]

192.480 Procedure to review denial of right to inspect other public records. ORS 192.450 is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body. In the

cases permitted under subsection (3) of ORS 192.450, unless he ordinarily serves as counsel for it.

[1973 c.794 §7]

192.470 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting him to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

(date)
I (we), _____, the undersigned, request the Attorney General (or District Attorney of _____ County) to order _____
(name of governmental body)
and its employees to (make available for inspection) (produce a copy or copies of) the following records:

1. _____
(Name or description of record)

2. _____
(Name or description of record)

I (we) asked to inspect and/or copy these records on _____ at _____
(date) (address)

The request was denied by the following person(s):

1. _____
(Name of public officer or employee;
title or position, if known)

2. _____
(Name of public officer or employee;
title or position, if known)

(Signature(s))

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General.

[1973 c.794 §10]

192.480 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in his discretion, as counsel in such suit for an elected official for which he ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed.
[1973 c.794 §8]

192.490 Court authority in reviewing action denying right to inspect public records; docketing; attorney fees. (1) In any suit filed under ORS 192.450 to 192.480, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any non-compliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under ORS 192.450 to 192.480 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded his reasonable attorney fees. If such person prevails in part, the court may in its discretion

award him his reasonable attorney fees, or an appropriate portion thereof.
[1973 c.794 §9]

192.500 Public records exempt from disclosure. (1) The following public records are exempt from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance:

(a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of an investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases;

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees

or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(f) Information relating to the appraisal of real estate prior to its acquisition;

(g) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections; and

(h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060.

(2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole and Probation, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent

the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Superintendent of Banks in his administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 41.875, 44.040, 57.850, 146.780, 173.230, 179.495, 181.540, 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 474.180, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 721.050, 731.264 or 744.017; and

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(3) If any public record contains material which is not exempt under subsection (1), (2) or (4) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) (a) Upon application of any public body prior to convening of the 1975 regular session of the Legislative Assembly, the Governor may exempt any class of public records, in addition to the classes specified in subsection (1) of this section, from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance, if he finds that the class of public records for which exemption is sought is such that unlimited public access

thereto would substantially prejudice or prevent the carrying out of any public function or purpose, so that the public interest in confidentiality of such records substantially outweighs the public interest in disclosure. Such exemption from disclosure shall be limited or conditioned to the extent the Governor finds appropriate.

(b) Prior to the granting of any exemption under this subsection the Governor shall hold a public hearing after notice as provided by ORS 183.335, or he may designate the Attorney General to hold the required hearing.

(c) Any exemption granted under this subsection shall expire upon adjournment of the 1975 regular session of the Legislative Assembly.

[1973 c.794 §11]

Purdon's PENNSYLVANIA Statutes Annotated
1976-1977 Cumulative Annual Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Title 65

§ 66.1 Definitions

In this act¹ the following terms shall have the following meanings:

(1) "Agency." Any department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, the Pennsylvania Turnpike Commission, or any State or municipal authority or similar organization created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function.

(2) "Public Record." Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; It shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act.

As amended 1971, June 17, P.L. 160, No. 9, § 1.

§ 66.2 Examination and inspection

Every public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania. 1957, June 21, P.L. 390, § 2.

§ 66.3 * Extracts, copies, photographs or photostats

Any citizen of the Commonwealth of Pennsylvania shall have the right to take extracts or make copies of public records and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats. 1957, June 21, P.L. 390, § 3.

§ 66.4 Appeal from denial of right

Any citizen of the Commonwealth of Pennsylvania denied any right granted to him by section 2 or section 3 of this act,¹ may appeal from such denial to the Court of Common Pleas of Dauphin County if an agency of the Commonwealth is involved, or to the court of common pleas of the appropriate judicial district if a political subdivision or any agency thereof is involved. If such court determines that such denial was not for just and proper cause under the terms of this act, it may enter such order for disclosure as it may deem proper. 1957, June 21, P.L. 390, § 4.

§ 66.4 Appeal from denial of right

Repealed in Part

Section 508(a) (90) of the "Appellate Court Jurisdiction Act of 1970", 1970, July 31, P.L. 673, No. 223, (17 P.S. § 211.508(a) (90)), provided that the jurisdiction of the court named in this section is transferred to and vested in the Commonwealth Court and that this section is repealed in so far as it relates to the Court of Common Pleas of Dauphin County.

General Laws of RHODE ISLAND, 1956
1976 Pocket Supplement

Freedom of Information (Open Records)
Right to Inspect Records and Public Meetings
Volume 7

45-43-7. Meetings—Records.—All regular council of local government meetings shall be open to the public and all records of its proceedings, resolutions and actions shall be open to public view.

Code of Laws of SOUTH CAROLINAFreedom of Information (Open Records)
Right to Inspect Records

South Carolina
Regular Session
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SOUTH CAROLINA
Regular Session

Ratification No. 739, Laws 1978

House Bill No. 2727

An Act To Provide That All Meetings Of Governmental Bodies Of This State, Except As Specifically Exempted, Shall Be Open To The Public; To Provide For The Disclosure Of Public Information; To Provide Penalties; And To Repeal Act 1396 Of 1972, Known As The "Freedom of Information Act".

Be it enacted by the General Assembly of the State of South Carolina:

Citation of act

SECTION 1. This act shall be known and cited as the "Freedom of Information Act".

Findings

SECTION 2. The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner as it conducts its business so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, this act is adopted, making it possible for citizens, or their representatives, to learn and report fully the activities of their public officials.

Definitions

SECTION 3. (a) "Public body" means any department of the State, any state board, commission, agency and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts and special purpose districts, or any organization, corporation or agency supported in whole or in part by public funds or expending public funds and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, such bodies as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

(b) "Person" includes any individual, corporation, partnership, firm, organization or association.

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this act nor shall the definition of public records include those records concerning which the public body, by favorable public vote of three-fourths of the membership taken within fifteen working days after receipt of written request, concludes that the public interest is best served by not disclosing them. *Provided*, however, nothing herein shall authorize or require the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of such institutions required to be made by law.

(d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(e) "Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

Inspection of public records

SECTION 4. (a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 5, in accordance with reasonable rules concerning time and place of access.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Such records shall be furnished at the lowest possible cost to the person requesting the records. Records shall be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for such public body to provide the records in such form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees shall not be charged for examination and review to determine if such documents are subject to disclosure. Nothing in this act shall prevent the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of such costs prior to searching for or making copies of the records.

(c) Each public body, upon written request for records made under this act, shall within fifteen days (excepting Saturdays, Sundays and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record.

Matters exempt from disclosure

SECTION 5. (a) The following matters may be exempt from disclosure under the provisions of this act:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy, including, but not limited to, information as to gross receipts contained in applications for business licenses.

(3) Records of law enforcement and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

(A) Disclosing identity of informants not otherwise known;

(B) The premature release of information to be used in a prospective law enforcement action;

(C) Disclosing investigatory techniques not otherwise known outside the government;

(D) By endangering the life, health or property of any person.

(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents incidental to proposed contractual arrangements and proposed sale or purchase of property.

(6) Salaries of employees below the level of department head; *provided*, however, that complete salary schedules showing compensation ranges for each employee classification, including longevity steps, where applicable shall be made available.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

(b) If any public record contains material which is not exempt under item (a) of this section, the public body shall separate the exempt and nonexempt material available for examination.

Certain matters public information

SECTION 6. Without limiting the meaning of other sections of this act, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 3, 5 and 8 of this act:

(1) The names, sex, race, title and dates of employment of all employees and officers of public bodies;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) Those statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the public body;

(5) Written planning policies and goals and final planning decisions;

(6) Information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) The minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 8.

Meetings of public bodies to be open

SECTION 7. Every meeting of all public bodies shall be open to the public unless closed pursuant to Section 8 of this act.

When meetings may be closed

SECTION 8. (a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee, or the appointment of a person to a public body; *provided*, however, that if an adversary hearing involving the employee, other than under a grievance procedure provided in Chapter 17 of Title 8 of the 1976 Code, is held such employee shall have the right to demand that the hearing be conducted publicly.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

(5) Prior to going into executive session the public agency shall vote in public on the question and when such vote is favorable the presiding officer shall announce the purpose of the executive session. Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this item "formal action" means a recorded vote committing the body concerned to a specific course of action.

(b) Any public body may hold a closed meeting for the purpose of receiving an administrative briefing by an affirmative vote of three-fourths of its members present and voting when required by some exceptional reason so compelling as to override the general public policy in favor of public meetings; *provided*, that no budgetary matters shall be discussed in such closed session except as otherwise provided by law. Such reasons and the votes of the members shall be recorded and be matters of public record. No regular or general practice or pattern of holding closed meetings shall be permitted.

(c) No chance meeting, social meeting or electronic communication shall be used in circumvention of the spirit of requirements of this act to act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(d) This act shall not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

Notice of meetings required

SECTION 9. (a) All public bodies shall give written public notice of their regular meetings at the beginning of each calendar year. The notice shall include the dates, times and places of such meetings. Agendas, if any, for regularly scheduled meetings shall be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies shall post on such bulletin board public notice for any called, special or re-scheduled meetings. Such notice shall be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice shall include the agenda, date, time and place of the meeting. This requirement shall not apply to emergency meetings of public bodies.

(b) Legislative committees shall post their meeting times during weeks of the regular session of the General Assembly and shall comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees shall give reasonable notice during weeks of the legislative session only if it is practicable to do so.

(c) Written public notice shall include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(d) All public bodies shall make an effort to notify local news media, or such other news media as may request notification of the times, dates, places and agenda of all public meetings, whether scheduled, rescheduled or called, and the efforts made to comply with this requirement shall be noted in the minutes of the meetings.

Minutes required

SECTION 10. (a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with Section 8 of this act.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to Section 8 of this act, provided that in so recording there is no active interference with the conduct of the meeting. *Provided*, further, that the public body shall not be required to furnish recording facilities or equipment.

Injunctive relief

SECTION 11. (a) Any citizen of the State may apply to the circuit court for injunctive relief to enforce the provisions of this act in appropriate cases provided such application is made no later than sixty days following the date which the alleged violation occurs or sixty days after ratification of such act in public session whichever comes later. The court may order equitable relief as it deems appropriate.

(b) If a person seeking such relief prevails, he may be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorney fees or an appropriate portion thereof.

Penalties

SECTION 12. Any person or group of persons who willfully violates the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

Repeal

SECTION 13. Act 1396 of 1972, as amended by Act 608 of 1976, is repealed.

Time effective

SECTION 14. This act shall take effect upon approval by the Governor.

Approved, July 18, 1978

SOUTH DAKOTA Compiled Laws 1974 Revision
 & 1978 Pocket Supplement

Freedom of Information (Open Records)
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1-26-2. Agency materials available for public inspection—Derogatory materials.—Each agency shall make available for public inspection all rules, final orders, decisions, opinions, intra-agency memoranda, together with all other materials, written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions. An agency shall hold confidential materials derogatory to a person but such information shall be made available to the person to whom it relates.

Source: SDC 1939, § 55.1203; SL 1966, ch 159, § 2; 1972, ch 8, § 4.

1-27-1. Records open to inspection. In every case where the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, such record, document, or other instrument shall be kept available and open to inspection by any person during the business hours of the office or place where the same is kept.

Source: SL 1935, ch 177, § 1; SDC 1939, § 48.0701; SL 1977, ch 16, § 2.

Amendments.

The 1977 amendment substituted "any statute of this state" for "the laws of this state."

1-27-2. Repealed by SL 1977, ch 16, § 3.

1-27-3. Records declared confidential or secret. Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept.

Source: SL 1935, ch 177, § 2; SDC 1939, § 48.0701; SL 1977, ch 16, § 1.

Amendments.

The 1977 amendment inserted "confidential or."

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15-304. Records open to public inspection.—All state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any such citizen, unless otherwise provided by law or regulations made pursuant thereto. [Acts 1957, ch. 285, § 1.]

15-305. Confidential records.—(1) The medical records of patients in state hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, shall be treated as confidential and shall not be open for inspection by members of the public. Additionally, all investigative records of the Tennessee bureau of criminal identification shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record, however, such investigative records of the Tennessee bureau of criminal identification shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except those directly involved in the investigation in the Tennessee bureau of investigation itself and the governor himself. The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including but not restricted to national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(2) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or his parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the state department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person,

agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(3) [Deleted by 1977 amendment.] [Acts 1957, ch. 285, § 2; 1970 (Adj. S.), ch. 531, §§ 1, 2; 1973, ch. 99, § 1; 1975, ch. 127, § 1; 1976 (Adj. S.), ch. 552, § 1; 1976 (Adj. S.), ch. 777, § 1; 1977, ch. 152, § 3.]

15-306. Violations.—(1) Any official who shall violate the provisions of §§ 15-304—15-307 shall be deemed guilty of a misdemeanor.

(2) [Deleted by 1977 amendment.] [Acts 1957, ch. 285, § 3; 1975, ch. 127, § 2; 1977, ch. 152, § 4.]

15-307. Right to make copies of public records.—In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof, or his authorized deputy; provided, however, the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats. [Acts 1957, ch. 285, § 4.]

15-308. Records of convictions of traffic and other violations—Availability.—Any public official having charge or custody of or control over any public records of convictions of traffic violations or any other state, county or municipal public offenses shall make available to any citizen, upon request, during regular office hours, a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor. Such official is authorized to fix a charge or fee per copy that would reasonably defray the cost of producing and delivering such copy or copies. [Acts 1974 (Adj. S.), ch. 581, § 1.]

15-401. Definitions.—1. "Section" shall mean the records management section of the department of finance and administration.

2. "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, microforms, electronic data processing output, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

3. "Permanent records" shall mean those records which have permanent administrative, fiscal, historical or legal value.

4. "Temporary records" shall mean those records which cease to have value immediately after departmental use and need not be retained for any purpose.

5. "Working papers" shall mean those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.

6. "Agency" shall mean any department, division, board, bureau, commission, or other separate unit of government created or established by the constitution, by law or pursuant to law.

7. "Disposition" shall mean preservation of the original records in whole or in part, preservation by photographic or other reproduction processes, or outright destruction of the records. [Acts 1974 (Adj. S.), ch. 739, § 1; 1975, ch. 286, § 2.]

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Chapter 890, Public Laws 1978

House Bill No. 2367

AN ACT to amend Title 8, Chapter 6 and Title 15, Chapter 3 of the Tennessee Code Annotated to provide for the confidentiality of books, records and other communications obtained, received and retained by the Attorney General and Reporter.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That:

SECTION 1. Title 8, Chapter 6 of the Tennessee Code Annotated is hereby amended by adding a new section following T.C.A. Section 8-635 which reads as follows:

All testimony, books, documents, or other writings, records or tangible objects obtained by the Attorney General pursuant to T.C.A. Sections 8-630 and 8-631 shall be confidential and shall not be publicly divulged by the Office of the Attorney General except in the discharge of the duties of the Office or in legal proceedings in which the State is a party.

SECTION 2. Tennessee Code Annotated, Section 15-305, is amended by adding a new subsection which reads as follows:

(3) (a) The following books, records and other materials in the possession of the Office of the Attorney General and Reporter which relate to any pending or contemplated legal or administrative proceeding in which the Office of the Attorney General and Reporter may be involved shall not be open for public inspection:

* Commerce Clearing House, Inc., Advance Session Laws Reporter, (1978)

- (i) books, records or other materials which are confidential or privileged by state law;
- (ii) books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;
- (iii) the work product of the Attorney General and Reporter or any attorney working under his supervision and control; or
- (iv) communications made to or by the Attorney General and Reporter or any attorney working under his supervision and control in the context of the attorney-client relationship.
- (v) books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to Tenn. Code Ann. Sections 15-304 and 15-307. It is the intent of this section to leave subject to public inspection and copying pursuant to T.C.A. 15-304 and 15-307 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the Attorney General's Office are not subject to inspection or copying in the office of the Attorney General, provided such records, books and materials are available for copying and inspection in such other departments.

(b) Books, records and other materials made confidential by this Act which are in the possession of the Office of the Attorney General and Reporter shall be open to inspection by the elected members of the General Assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(c) Except for the provisions of subsection (b) hereof, the books, records and materials made confidential or privileged by this Act shall be disclosed to the public only in the discharge of the duties of the Office of the Attorney General.

SECTION 3. Opinions issued by the office of the Attorney General and Reporter pursuant to the duties of Tennessee Code Annotated, Section 8-609 (2), shall be made available for public inspection.

SECTION 4. This Act shall take effect upon becoming law, the public welfare requiring it.

Vernon's Annotated Penal Code of TEXAS
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Art. 6252—17a. Access by public to information in custody of governmental agencies and bodies

Declaration of policy

Section 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.

Definitions

Sec. 2. In this Act:

(1) "Governmental body" means:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed members;

(B) the commissioners court of each county and the city council or governing body of each city in the state;

(C) every deliberative body having rulemaking or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city;

(D) the board of trustees of every school district, and every county board of school trustees and county board of education;

(E) the governing board of every special district;

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof;

(G) the Judiciary is not included within this definition.

(2) "Public records" means the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information.

Public information

Sec. 3. (a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to

the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas¹ are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act;²

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas;³

(16) the audit working papers of the State Auditor.

(b) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated

in this section. This section is not authority to withhold information from individual members or committees of the legislature to use for legislative purposes.

(c) The custodian of the records may in any instance within his discretion make public any information contained within Section 3, Subsection (a) 6, 9, 11, and 15.

(d) It is not intended that the custodian of public records may be called upon to perform general research within the reference and research archives and holdings of state libraries.

¹ See Title 14 Appendix, foll. art. 320a—1.

² See article 581—4, subsec. A.

³ See article 4477, rule 34a et seq.

Application for public information

Sec. 4. On application for public information to the custodian of information in a governmental body by any person, the custodian shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body. If the information is in active use or in storage and, therefore, not available at the time a person asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act. Nothing in this Act shall authorize any person to remove original copies of public records from the offices of any governmental body without the written permission of the custodian of the records.

Custodian of public records described

Sec. 5. (a) The chief administrative officer of the governmental body shall be the custodian of public records, and the custodian shall be responsible for the preservation and care of the public records of the governmental body. It shall be the duty of the custodian of public records, subject to penalties provided in this Act, to see that the public records are made available for public inspection and copying; that the records are carefully protected and preserved from deterioration, alteration, mutilation, loss, removal, or destruction; and that public records are repaired, renovated, or rebound when necessary to preserve them properly. When records are no longer currently in use, it shall be within the discretion of the agency to determine a period of time for which said records will be preserved.

(b) Neither the custodian nor his agent who controls the use of public records shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested; and the custodian or his agent shall give, grant, and extend to the person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this Act.

Specific information which is public

Sec. 6. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by, governmental bodies upon completion;

(2) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of governmental bodies;

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law;

(4) the names of every official and the final record of voting on all proceedings in governmental bodies;

(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by any governmental body, upon completion of such estimates;

(6) the name, place of business, and the name of the city to which local sales and use taxes are credited, if any, for the named person, of persons reporting or paying sales and use taxes under the Limited Sales, Excise, and Use Tax Act;¹

(7) descriptions of an agency's central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(8) statements of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(9) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(10) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency;

(11) each amendment, revisions, or repeal of 7, 8, 9 and 10 above;

(12) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(13) statements of policy and interpretations which have been adopted by the agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information currently regarded by agency policy as open to the public.

¹ See V.A.T.S. Tax.-Gen. art. 20.01 et seq.

Attorney general opinions

Sec. 7. (a) If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

(b) The attorney general shall forthwith render a decision, consistent with standards of due process, to determine whether the requested information is a public record or within one of the above stated exceptions. The specific information requested shall be supplied to the attorney general but shall not be disclosed until a final determination has been made. The attorney general shall issue a written opinion based upon the determination made on the request.

Writ of mandamus

Sec. 8. If a governmental body refuses to request an attorney general's decision as provided in this Act, or to supply public information or information which the attorney general has determined to be a public record, the person requesting the information or the attorney general may seek a writ of mandamus compelling the governmental body to make the information available for public inspection.

Cost of copies of public records

Sec. 9. (a) The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal

size shall not be excessive. The State Board of Control shall from time to time determine the actual cost of standard size reproductions and shall periodically publish these cost figures for use by agencies in determining charges to be made pursuant to this Act.

(b) Charges made for access to public records comprised in any form other than up to standard sized pages or in computer record banks, microfilm records, or other similar record keeping systems, shall be set upon consultation between the custodian of the records and the State Board of Control, giving due consideration to the expenses involved in providing the public records making every effort to match the charges with the actual cost of providing the records.

(c) It shall be the policy of all governmental bodies to provide suitable copies of all public records within a reasonable period of time after the date copies were requested. Every governmental body is hereby instructed to make reasonably efficient use of each page of public records so as not to cause excessive costs for the reproduction of public records.

(d) The charges for copies made in the district clerk's office and the county clerk's office shall be as otherwise provided by law.

(e) No charge shall be made for one copy of any public record requested from state agencies by members of the legislature in performance of their duties.

(f) The charges for copies made by the various municipal court clerks of the various cities and towns of this state shall be as otherwise provided by ordinance.

Distribution of confidential information prohibited

Sec. 10. (a) Information deemed confidential under the terms of this Act shall not be distributed.

(b) Any person who violates Section 10(a) of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed \$1,000, or by both such fine and confinement.

Bond for payment of costs for preparation of public records or cash prepayment

Sec. 11. A bond for payment of costs for the preparation of such public records, or a prepayment in cash of the anticipated costs for the preparation of such records, may be required by the head of the department or agency as a condition precedent to the preparation of such record where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid.

Penalties

Sec. 12. Any person who wilfully destroys, mutilates, removes without permission as provided herein, or alters public records shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$4,000, or confined in the county jail not less than three days nor more than three months, or both such fine and confinement.

Procedures for inspection of public records

Sec. 13. Each governmental body may promulgate reasonable rules of procedure by which public records may be inspected efficiently, safely, and without delay.

Interpretation of this act

Sec. 14. (a) This Act does not prohibit any governmental body from voluntarily making part or all of its records available to the public, unless expressly prohibited by law; provided that such records shall then be available to any person.

(b) This Act does not authorize the withholding of information or limit the availability of public records to the public, except as expressly so provided.

(c) This Act does not give authority to withhold information from individual members or committees of the Legislature of the State of Texas to use for legislative purposes.

(d) This Act shall be liberally construed in favor of the granting of any request for information.

(e) Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

Severability

Sec. 15. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Acts 1973, 63rd Leg., p. 1112, ch. 424, eff. June 14, 1973. Sec. 14(e) added by Acts 1975, 64th Leg., p. 809, ch. 314, § 1, eff. May 27, 1975.

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63-2-66. Archives and records service—Access—Certified copies.—The archivist shall keep the public archives in his custody in such arrangement and condition as to make them accessible for convenient use and shall permit them to be inspected, examined, abstracted or copied at reasonable times under his supervision by any person. He shall upon the demand of any person furnish certified copies thereof on payment in advance of reasonable fees as determined by the director of finance. Copies of public records transferred pursuant to law from the office of origin to the custody of the archivist when certified by the archivist under the seal of the Utah state archives shall have the same legal force and effect as if certified by their original custodian.

78-26-1. Classes of public writings.—Public writings are divided into four classes:

- (1) Laws.
- (2) Judicial records.
- (3) Other official documents.
- (4) Public records, kept in this state, of private writings, which such records may be made by handwriting, typewriting, or as a photostatic microphotographic, photographic, or similar reproduction of such private writings.

78-26-2. Right to inspect and copy.—Every citizen has a right to inspect and take a copy of any public writing of this state except as otherwise expressly provided by statute.

78-26-3. Officials to furnish certified copies.—Every public officer having the custody of a public writing which a citizen has the right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor.

78-26-4. Public and private statutes defined.—Statutes are public and private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

VERMONT Statutes Annotated
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Title 1 - Chapter 5

Subchapter 3. Access to Public Records

§ 315. Statement of policy

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy.—Added 1975, No. 231 (Adj. Sess.).

Revision note. Designation of opening paragraph as subsec. (a) was omitted to conform to V.S.A. style.

§ 316. Access to public records and documents

(a) Any person may inspect or copy any public record or document of a public agency, on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made during customary office hours.

(b) If a photocopying machine or other mechanical device maintained for use by a public agency is used by the agency to copy the public record or document requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public agency. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee

is established for the copy, no additional costs or fees shall be charged.

(c) A public agency having photocopying or other mechanical copying facilities shall utilize those facilities to produce copies. If the public agency does not have such facilities, nothing in this section shall be construed to require the public agency to provide or arrange for photocopying service, to use or permit the use of copying facilities other than its own, to permit operation of its copying facilities by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.

(d) A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.—Added 1975, No. 231 (Adj. Sess.).

§ 317. Definitions; public agency; public records and documents

(a) As used in this subchapter, “public agency” or “agency” means any agency, board, department, commission, committee, or authority of the state. Towns, cities, counties, schools and all subdivisions thereof are not included in this definition.

(b) As used in this subchapter, “public record” or “public document” means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except:

(1) records which by law are designated confidential or by a similar term;

(2) records which by law may only be disclosed to specifically designated persons;

(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the state;

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege;

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, records relating to management and direction of a law enforcement agency and

records reflecting the initial arrest of a person and the charge shall be public;

(6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business;

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his designated representative;

(8) test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination;

(9) trade secrets, including, but not limited to, any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it;

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain, provided; however, that this section does not apply to lists which are by law made available to the public;

(11) student records at educational institutions funded wholly or in part by state revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;

(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

(13) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase

price of real or personal property for public purposes prior to the formal award of contracts thereof;

(14) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;

(15) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees;

(16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the state of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document.—Added 1975, No. 231 (Adj. Sess.).

Revision note. The word "act" was changed to "subchapter" in subsection (b)(16) to conform to V.S.A. style.

§ 318. Procedure

(a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, he shall so certify in writing stating his reasons for denial of access to the record. Such certification shall be made within two business days, unless otherwise provided in division (5) of this subsection. The custodian shall also notify the person of his right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five days, excepting Saturdays, Sundays, and legal public holidays, after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 819 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to him by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this division, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted his administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.—Added 1975, No. 231 (Adj. Sess.).

§ 319. Enforcement

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the superior court in the county in which the complainant resides, or has his personal place of business, or in which the public records are situated, or in the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a

case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden is on the agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d) The court may assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.—Added 1975, No. 231 (Adj. Sess.).

§ 320. Penalties

(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the department of personnel if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the department recommends.

(b) In the event of noncompliance with the order of the court, the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.—Added 1975, No. 231 (Adj. Sess.).

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Regular Session

Act 174, Laws 1978

Senate Bill No. 189

NOTE: [Bracketed] material to be deleted.
Underscored material to be added.

15 AN ACT TO AMEND 23 V.S.A. §§ 102 AND 104 RELATING TO DUTIES OF THE COM-
16 MISSIONER.

17 It is hereby enacted by the General Assembly of the State of Vermont:
18

19 Sec. 1. 23 V.S.A. § 102 is amended to read:

20 § 102. DUTIES OF COMMISSIONER

21 (a) The commissioner shall:

22 (1) Register motor vehicles and dealers;

23 (2) License operators;

24 (3) File reports received concerning accidents involving motor
25 vehicles;

*Commerce Clearing House, Inc., Advance
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1 (4) Prepare full statistics from and preserve, properly filed and
2 indexed, such registrations, operator licenses, and accident reports
3 for three years after their dates;

4 (5) File and record reports received of convictions of persons
5 violating motor vehicle laws;

6 (6) Keep a record of the suspension and revocation of licenses and
7 registrations; [and]

8 (7) Prepare full statistics from and preserve, properly filed and
9 indexed, such records of convictions, suspensions, and revocations for
10 at least six years after their dates; and

11 (8) Issue certificates of title for motor vehicles.

12 (b) The records enumerated in subsection (a) shall be deemed official
13 records.

14 Sec. 2. 23 V.S.A. § 104 is amended to read:

15 § 104. PUBLIC RECORDS

16 All matters pertaining to the registration of motor vehicles, licensing
17 of operators and registration of dealers, all original accident reports,
18 and the records showing suspension and revocation of licenses and re-
19 gistrations shall be deemed official and public records, and shall be
20 open to public inspection at all reasonable hours. The commissioner
21 shall furnish certified copies of such records to any person interested
22 therein on payment of such fee as he shall deem reasonable.

23 Sec. 3. This act shall take effect from passage.

Approved, March 31, 1978

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Act 202, Laws 1978

House Bill No. 350

AN ACT to amend 1 V.S.A. Section 317(a) and to add 1 V.S.A. Section 317(b)(17) relating to access to public records.

It is hereby enacted by the General Assembly of the State of Vermont:

Section 1. 1 V.S.A. Section 317(a) is amended to read:

(a) As used in this subchapter, "public agency" or "agency" means any agency, board, department, commission, committee, branch or authority of the state or any agency, board, committee, department, branch, commission or authority of any political subdivision of the state.

Section 2. 1 V.S.A. Section 317(b)(17) is added to read:

(17) records of inter-departmental and intra-departmental communications in any County, City, Town, Village, Town School District, Incorporated School District, Union School District, Consolidated Water District, Fire District, or any other political subdivision of the state to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with 1 V.S.A. Section 312

Approved, April 5, 1978

*Commerce Clearing House, Inc., Advance
Session Laws Reporter(1978)

Code of VIRGINIA 1950
1976 Cumulative Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Volume 1

§ 2.1-340.1. Policy of chapter. — It is the purpose of the General Assembly by providing this chapter to ensure to the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. This chapter recognizes that the affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. To the end that the purposes of this chapter may be realized, it shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person. (1976, c. 467.)

§ 2.1-341. Definitions.

(b) "*Official records*" means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, made and received in pursuance of law by the public officers of the State and its counties, municipalities and subdivisions of government in the transaction of public business.

(e) "*Public body*" shall mean any of the groups, agencies or organizations enumerated in subsection (a) of this section.

(f) "*Scholastic records*" means those records, files, documents, and other materials containing information about a student and maintained by a public body which is an educational agency or institution or by a person acting for such agency or institution, but, for the purpose of access by a student, does not include (i) financial records of a parent or guardian nor (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute. (1968, c. 479; 1970, c. 456; 1974, c. 332; 1975, c. 307.)

§ 2.1-341.1. Notice of chapter. — Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment. (1976, c. 467.)

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter. — (a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this State during the regular office hours of the custodian of such records. Access to such records shall not be denied to any such citizen of this State, nor to representatives of newspapers and magazines with circulation in this State, and representatives of radio and television stations broadcasting in or into this State; provided, that the custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within fourteen calendar days from the receipt of the request by the public body. Such citizen request shall designate the requested records with reasonable specificity. If the requested records or public body are excluded from the provisions of this chapter, the public body to which the request is directed shall within fourteen calendar days from the receipt of the request tender a written explanation as to why the records are not available to the requestor. Such explanation shall make specific reference to the applicable provisions of this chapter or other Code sections which make the requested records unavailable. In the event a determination of the availability of the requested records may not be made within the fourteen-calendar-day period, the public body to which the request is directed shall inform the requestor as such, and shall have an additional ten calendar days in which to make a determination of availability. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The public body may make reasonable charges for the copying and search time expended in the supplying of such records; however, in no event shall such charges exceed the actual cost of the public body in supplying such records. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

(b) The following records are excluded from the provisions of this chapter:

(1) Memoranda, correspondence, evidence and complaints related to criminal investigations, reports submitted to the State and local police in confidence, and all records of persons imprisoned in a penal institution in this State provided such records relate to the said imprisonment.

(2) Confidential records of all investigations of applications for licenses and all licensees made by or submitted to the Alcoholic Beverage Control Board.

(3) State income tax returns, scholastic records and personnel records, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; provided, however, that the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his parent or guardian, except in instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education.

(4) Memoranda, working papers and correspondence held by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the State or the president or other chief executive officer of any state-supported institutions of higher education.

(5) Memoranda, working papers and records compiled specifically for use in litigation and material furnished in confidence with respect thereto.

(6) Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition. (1968, c. 479; 1973, c. 461; 1974, c. 382; 1975, cc. 307, 312; 1976, cc. 640, 709.)

§ 2.1-343. Meetings to be public except as otherwise provided; minutes: information as to time and place. — Except as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345, all meetings shall be public meetings. Minutes shall be recorded at all public meetings. Information

as to the time and place of each meeting shall be furnished to any citizen of this State who requests such information. Requests to be notified on a continual basis shall be made at least once a year in writing and include name, address, zip code and organization if any, together with an adequate supply of stamped self-addressed envelopes. (1968, c. 479; 1973, c. 461; 1976, c. 467.)

The 1973 amendment added the second sentence.

The 1976 amendment added the fourth sentence.

§ 2.1-344. Executive or closed meetings. — (a) Executive or closed meetings may be held only for the following purposes:

(1) Discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, disciplining or resignation of public officers, appointees or employees of any public body.

(2) Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property.

(3) The protection of the privacy of individuals in personal matters not related to public business.

(4) Discussion concerning a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating in the community.

(5) The investing of public funds where competition or bargaining are involved, where if made public initially the financial interest of the governmental unit would be adversely affected.

(6) Consultation with legal counsel and briefings by staff members, consultants or attorneys, pertaining to actual or potential litigation, or other legal matters within the jurisdiction of the public body.

(b) No meeting shall become an executive or closed meeting unless there shall have been recorded in open meeting an affirmative vote to that effect by the public body holding such meeting, which motion shall state specifically the purpose or purposes hereinabove set forth in this section which are to be the subject of such meeting and a statement included in the minutes of such meeting which shall make specific reference to the applicable exemption or exemptions as provided in subsection (a) or § 2.1-345. A general reference to the provisions of this chapter or to the exemptions of subsection (a) shall not be sufficient to satisfy the requirements for an executive or closed meeting. The public body holding such an executive or closed meeting shall restrict its consideration of matters during the closed portions to only those purposes specifically exempted from the provisions of this chapter.

(c) No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or closed meeting shall become effective unless such public body, following such meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion.

(d) Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same regulations for holding executive or closed sessions as are applicable to any other public body. (1968, c. 479; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709.)

§ 2.1-345. Agencies to which chapter inapplicable. — The provisions of this chapter shall not be applicable to:

(1) Deliberations of standing and other committees of the General Assembly. Provided that, unless such action contravenes the rules of a body of the General Assembly under provisions of Article IV, § 7 of the Constitution of Virginia, when bills or other legislative matters are considered in executive or closed meetings, final votes thereon shall be taken in open meetings.

(2) Legislative interim study commissions and committees, including the Virginia Code Commission; provided, however, that final votes shall be taken in open meetings.

(3) The Virginia Advisory Legislative Council and its committees; provided, however, that final votes shall be taken in open meetings.

(4) Study committees or commissions appointed by the Governor; provided, however, that final votes shall be taken in open meetings.

(5) Boards of visitors or trustees of state-supported institutions of higher education; provided, that, except for the actions excluded by § 2.1-344, announcements of the actions of such boards are made available immediately following the meetings, with membership of such boards then available for discussion of actions taken, and that the official minutes of the board meetings are made available to the public not more than three working days after such meetings.

(6) Parole boards; petit juries; grand juries; and the Virginia State Crime Commission.

(7) Study commissions or study committees appointed by the governing bodies of counties, cities and towns; provided, however, that final votes shall be taken in open meetings and provided, further, that no such committee or commission appointed by such governing bodies, the membership of which includes more than one member of a three member governing body or includes more than two members of a governing body having four or more members, shall be deemed to be study commissions or study committees under the provisions of this section. (1968, c. 479; 1971, Ex. Sess., c. 1; 1973, c. 461; 1974, c. 332.)

§ 2.1-346. Proceedings for enforcement of chapter. — Any person denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by petition for mandamus or injunction, supported by an affidavit showing good cause, addressed to the court of record, having jurisdiction of such matters, of the county or city in which such rights and privileges were so denied. Any such petition alleging such denial by a board, bureau, commission, authority, district or agency of the State government or by a standing or other committee of the General Assembly, shall be addressed to the Circuit Court of the city of Richmond. Such petition shall be heard within seven days of the date when the same is made; provided, if such petition is made outside of the regular terms of the circuit court of a county which is included in a judicial circuit with another county or counties, the hearing on such petition shall be given precedence on the docket of such court over all cases which are not otherwise given precedence by law. Such petition shall allege with

reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of such rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the court may award costs and reasonable attorney's fees to the petitioning citizen. Such costs and fees shall be paid by the public body in violation of this chapter. The court may award costs and reasonable attorney's fees to the public body if the court finds that the petition was based upon a clearly inadequate case. (1968, c. 479; 1976, c. 709.)

The 1976 amendment added the last five sentences of the section.

§ 2.1-346.1. Violations and penalties. — In a proceeding commenced against members of governing bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343 or 2.1-344, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such person or persons in his or her individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than twenty-five dollars nor more than five hundred dollars, which amount shall be paid into the State Literary Fund. (1976, c. 467.)

Revised Code of WASHINGTON Annotated
1977 Pocket Part

Freedom of Information (Open Records)
Right to Inspect Records
Title 42

PUBLIC RECORDS

42.17.250 Duty to publish procedures

(1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) rules of procedure;

(d) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed. [Enacted Laws 1973 ch 1 § 25, effective January 1, 1973 (Initiative Measure No. 276 § 25).]

42.17.260 Documents and indexes to be made public

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records. To the extent required to prevent an unreasonable invasion of personal privacy, an agency shall delete identifying details when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) Each agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(3) An agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(4) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if—

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(5) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law: *Provided, however,* That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: *Provided further,* That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.04 RCW. [Enacted Laws 1973 ch 1 § 28, effective January 1, 1973 (Initiative Measure No. 276 § 26); Amended by Laws 1st Ex Sess 1975 ch 294 § 14, effective July 2, 1975.]

42.17.270 Facilities for copying—Availability of public records

Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter. [Enacted Laws 1973 ch 1 § 27, effective

January 1, 1973 (Initiative Measure No. 276 § 27); Amended by Laws 1st Ex Sess 1975 ch 294 § 15, effective July 2, 1975.]

42.17.280 Times for inspection and copying

Public records shall be available for inspection and copying during the customary office hours of the agency: *Provided,* that if the agency does not have customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a. m. to noon and from one o'clock p. m. to four o'clock p. m. Monday through Friday, excluding legal holidays, unless the person making the request and the agency or its representative agree on a different time. [Enacted Laws 1973 ch 1 § 28, effective January 1, 1973 (Initiative Measure No. 276 § 28).]

42.17.290 Protection of public records—Public access

Agencies shall adopt and enforce reasonable rules and regulations, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies from honoring requests received by mail for copies of identifiable public records. [Enacted Laws 1973 ch 1 § 29, effective January 1, 1973 (Initiative Measure No. 276 § 28); Amended by Laws 1st Ex Sess 1975 ch 294 § 16, effective July 2, 1975.]

42.17.300 Charges for copying

No fee shall be charged for the inspection of public records. Agencies may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records, which charges shall not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying. [Enacted Laws 1973 ch 1 § 30, effective January 1, 1973 (Initiative Measure No. 276 § 30).]

42.17.310 Certain personal and other records exempt

(1) The following shall be exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: *Provided*, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: *Provided, further*, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(2) The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [Enacted Laws 1973 ch 1 § 31, effective January 1, 1973 (Initiative Measure No. 276 § 31); Amended by Laws 1st Ex Sess 1975 ch 294 § 17, effective July 2, 1975.]

42.17.315 Certain records obtained by colleges, universities, libraries or archives exempt

Notwithstanding the provisions of RCW 42.17.280 through 42.17.340, as now or hereafter amended, no state college, university, library, or archive shall be required by chapter 42.17 RCW to make available for public inspection and copying any records or documents obtained by said college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to such records or documents: *Provided*, That this section shall not apply to any public records as defined in RCW 40.14.010. [Added by Laws 1st Ex Sess 1975 ch 294 § 22, effective July 2, 1975.]

42.17.320 Prompt responses required

Responses to requests for public records shall be made promptly by agencies. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action for the purposes of judicial review. [Enacted Laws 1973 ch 1 § 32, effective January 1, 1973 (Initiative Measure No. 276 § 32); Amended by Laws 1st Ex Sess 1975 ch 294 § 18, effective July 2, 1975.]

42.17.330 Court protection of public records

The examination of any specific public record may be enjoined if, upon motion and affidavit, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. [Enacted Laws 1973 ch 1 § 33, effective January 1, 1973 (Initiative Measure No. 276 § 33); Amended by Laws 1st Ex Sess 1975 ch 294 § 19, effective July 2, 1975.]

42.17.340 Judicial review of agency actions

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is required.

(2) Judicial review of all agency actions taken or challenged under RCW 42.17.250 through 42.17.320 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section.

(3) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars for each day that he was denied the right to inspect or copy said public record. [Enacted Laws 1973 ch 1 § 34, effective January 1, 1973 (Initiative Measure No. 276 § 34); Amended by Laws 1st Ex Sess 1975 ch 294 § 20, effective July 2, 1975.]

CJS Records §§ 35 et seq.

Ops Atty Gen 1973 No. 4 (availability, for inspection and copying, of records of school district relating to district employees' salaries and payroll deductions).

Key Number Digests: Records ¶14.

ADMINISTRATION AND ENFORCEMENT

42.17.350 Public disclosure commission—Established—Membership—Per diem

There is hereby established a "Public Disclosure Commission" which shall be composed of five members who shall be appointed by the governor, with the consent of the senate. All appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party. The original members shall be appointed within sixty days after the effective date of this act. The term of each member shall be five years except that the original five members shall serve initial terms of one, two, three, four, and five years, respectively, as designated by the governor. No member of the commission, during his tenure, shall (1) hold or campaign for elective office; (2) be an officer of any political party or political committee; (3) permit his name to be used, or make contributions, in support of or in opposition to any candidate or proposition; (4) participate in any way in any election campaign; or (5) lobby or employ or assist a lobbyist. No member shall be eligible for appointment to more than one full term. A vacancy on the commission shall be filled within thirty days of the vacancy by the governor, with the consent of the senate, and the appointee shall serve for the remaining term of his predecessor. A vacancy shall not impair the powers of the remaining members to exercise all of the powers of the commission. Three members of the commission shall constitute a quorum. The commission shall elect its own chairman and adopt its own rules of procedure in the manner provided in chapter 34.04 RCW. Any member of the commission may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

Each member shall receive per diem in the amount of forty dollars in lieu of expenses for each day or portion thereof spent in performance of his duties as a member of the commission, and in addition shall be reimbursed for travel expenses actually incurred while engaged in the business of the commission as provided in chapter 43.03 RCW. The compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state.

Nothing in this section shall prohibit the commission, or any of its members or staff on the authority of the commission, from responding to communications from the legislature or any of its members or from any state agency or from appearing and testifying at an open public meeting (as defined by RCW 42.30.030) or a hearing to adopt rules held pursuant to RCW 34.04.025 on matters directly affecting the exercise of their duties and powers under this chapter. [Enacted Laws 1973 ch 1 § 35, effective January 1, 1973 (Initiative

Measure No. 276 § 35); Amended by Laws 1st Ex Sess 1975 ch 294 § 23, effective July 2, 1975.]

42.17.360 Commission—Duties

The commission shall:

- (1) Develop and provide forms for the reports and statements required to be made under this chapter;
- (2) Prepare and publish a manual setting forth recommended uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter;
- (3) Compile and maintain a current list of all filed reports and statements;
- (4) Investigate whether properly completed statements and reports have been filed within the times required by this chapter;
- (5) Upon complaint or upon its own motion, investigate and report apparent violations of this chapter to the appropriate law enforcement authorities;
- (6) Prepare and publish an annual report to the governor as to the effectiveness of this chapter and its enforcement by appropriate law enforcement authorities; and
- (7) Enforce this chapter according to the powers granted it by law. [Enacted Laws 1973 ch 1 § 36, effective January 1, 1973 (Initiative Measure No. 276 § 36).]

42.17.370 Commission—Additional powers

The commission is empowered to:

- (1) Adopt, promulgate, amend, and rescind suitable administrative rules and regulations to carry out the policies and purposes of this chapter, which rules and regulations shall be promulgated pursuant to the provisions of chapter 34.04 RCW;
- (2) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;
- (3) Make from time to time, on its own motion, audits and field investigations;
- (4) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;
- (5) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence and require the production of any books, papers, correspondence, memorandums, or other records which the commission deems relevant or material for the purpose of any investigation authorized under this chapter, or any other proceeding under this chapter;
- (6) Adopt and promulgate a code of fair campaign practices;
- (7) Relieve, by published regulation of general applicability, candidates or political committees of obligations to comply with the provisions of this chapter relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than one thousand dollars; and
- (8) Enact regulations prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies,

counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. The term "legislative information", for the purposes of this subsection, means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his regular examination of each agency under chapter 43.09 RCW shall review such regulations, accounts, and reports and make appropriate findings, comments, and recommendations in his examination reports concerning those agencies.

(9) The commission, after hearing, by order approved and ratified by a majority of the membership of the commission, may suspend or modify any of the reporting requirements hereunder in a particular case if it finds that literal application of this chapter works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of the chapter. The commission shall find that a manifestly unreasonable hardship exists if reporting the name of an entity required to be reported under RCW 42.17.240(1)(g)(ii) would be likely to adversely affect the competitive position of any entity in which the person filing the report or any member of his immediate family holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more. Any suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required hereunder. Any citizen shall have standing to bring an action in Thurston county superior court to contest the propriety of any order entered hereunder within one year from the date of the entry of such order. [Enacted Laws 1973 ch 1 § 37 effective January 1, 1973 (Initiative Measure No 276 § 37); Amended by Laws 1st Ex Sess 1975 ch 294 § 25, effective July 2, 1975; Laws 1st Ex Sess 1977 ch 336 § 7.]

Ops Atty Gen 1978 No. 14 (procedures for obtaining relief from reporting requirements).

42.17.380 Secretary of state, attorney general—Duties

(1) The secretary of state, through his office, shall perform such ministerial functions as may be necessary to enable the commission to carry out its responsibilities under this chapter. The office of the secretary of state shall be designated as the place where the public may file papers or correspond with the commission and receive any form or instruction from the commission.

(2) The attorney general, through his office, shall supply such assistance as the commission may require in order to carry out its responsibilities under this chapter. The commission may employ attorneys who are neither the attorney general nor an assistant attorney general to carry out any function of the attorney general prescribed in this chapter. [Enacted Laws 1973 ch 1 § 38, effective January 1, 1973 (Initiative Measure No. 276 § 38); Amended by Laws 1st Ex Sess 1975 ch 294 § 26, effective July 2, 1975.]

42.17.390 Civil remedies and sanctions

(1) One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this act, his registration may be revoked or suspended and he may be enjoined from receiving compensation or making expenditures for lobbying: *Provided*, however, that imposition of such sanction shall

not excuse said lobbyist from filing statements and reports required by this chapter.

(c) Any person who violates any of the provisions of this act may be subject to a civil penalty of not more than ten thousand dollars for each such violation.

(d) Any person who fails to file a properly completed statement or report within the time required by this act may be subject to a civil penalty of ten dollars per day for each day each such delinquency continues.

(e) Any person who fails to report a contribution or expenditure may be subject to a civil penalty equivalent to the amount he failed to report.

(f) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein. [Enacted Laws 1973 ch 1 § 39, effective January 1, 1973 (Initiative Measure No. 276 § 39).]

CJS Elections §§ 339, 344, Statutes § 6.

Key Number Digests: Elections ¶317, Statutes ¶44.

42.17.400 Enforcement

(1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17.300.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this chapter, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, papers and documents which may be relevant or material to any investigation authorized under this chapter.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or the production of the accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this chapter, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, shall be effective state-wide, and, upon application of the attorney general or said prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) Any person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself bring in the name of the state any of the actions (here-

inafter referred to as a citizen's action) authorized under this chapter. This citizen action may be brought only if the attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after such notice and such person has thereafter further notified the attorney general and prosecuting attorney that said person will commence a citizen's action within ten days upon their failure so to do, and the attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice. If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he shall be entitled to be reimbursed by the state of Washington for costs and attorney's fees he has incurred: *Provided*, That in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including a reasonable attorney's fee to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he shall be awarded all costs of trial, and may be awarded a reasonable attorney's fee to be fixed by the court to be paid by the state of Washington. [Enacted Laws 1973 ch 1 § 40, effective January 1, 1973 (Initiative Measure No. 276 § 40); Amended by Laws 1st Ex Sess 1975 ch 294 § 27, effective July 2, 1975.]

Defendants in a citizen's action instituted under RCW 43.17.400(4) (Initiative 376, § 40(4)) are sufficiently protected from any chilling effect of

frivolous and abusive lawsuits interfering with their exercise of First Amendment rights. *Frits v Gorton* (1974) 83 Wn 2d 378, 517 P2d 911.

42.17.410 Limitation on actions

Any action brought under the provisions of this chapter must be commenced within six years after the date when the violation occurred. [Enacted Laws 1973 ch 1 § 41, effective January 1, 1973 (Initiative Measure No. 276 § 41).]

42.17.420 Date of mailing deemed date of receipt

When any application, report, statement, notice, or payment required to be made under the provisions of this chapter has been deposited post-paid in the United States mail properly addressed, it shall be deemed to have been received on the date of mailing. It shall be presumed that the date shown by the post office cancellation mark on the envelope is the date of mailing. [Enacted Laws 1973 ch 1 § 42, effective January 1, 1973 (Initiative Measure No. 276 § 43).]

42.17.430 Certification of reports

Every report and statement required to be filed under this chapter shall identify the person preparing it, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed. [Enacted Laws 1973 ch 1 § 43, effective January 1, 1973 (Initiative Measure No. 276 § 43).]

42.17.440 Statements and reports public records

All statements and reports filed under this chapter shall be public records of the agency where they are filed, and shall be available for public inspection

and copying during normal business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency. [Enacted Laws 1973 ch 1 § 44, effective January 1, 1973 (Initiative Measure No. 276 § 44).]

CJS Records §§ 34 et seq.

Key Number Digests: Records ¶14.

42.17.450 Duty to preserve statements and reports

Persons with whom statements or reports or copies of statements or reports are required to be filed under this chapter shall preserve them for not less than six years. The commission, however, shall preserve such statements or reports for not less than ten years. [Enacted Laws 1973 ch 1 § 45, effective January 1, 1973 (Initiative Measure No. 276 § 45).]

CJS Records §§ 34, 40.

Key Number Digests: Records ¶13.

42.17.900 Effective date

The effective date of this act shall be January 1, 1973. [Enacted Laws 1973 ch 1 § 49, effective January 1, 1973 (Initiative Measure No. 276 § 49).]

42.17.910 Severability

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [Enacted Laws 1973 ch 1 § 46, effective January 1, 1973 (Initiative Measure No. 276 § 46).]

42.17.911 Severability—1975 1st ex.s. c 294

If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [Enacted Laws 1st Ex Sess 1975 ch 294 § 29, effective July 2, 1975.]

CJS Statutes § 92.

Key Number Digests: Statutes ¶44.

42.17.920 Construction

The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [Enacted Laws 1973 ch 1 § 47, effective January 1, 1973 (Initiative Measure No. 276 § 47).]

42.17.930 Chapter, section headings not part of law

Chapter and section captions or headings as used in this act do not constitute any part of the law. [Enacted Laws 1973 ch 1 § 48, effective January 1, 1973 (Initiative Measure No. 276 § 48).]

42.17.940 Repealer

Chapter 9, Laws of 1965, as amended by section 9, chapter 150, Laws of 1965 ex. sess., and RCW 29.18.140; and chapter 131, Laws of 1967 ex. sess. and RCW 44.64; and chapter 82, Laws of 1972 (42nd Leg. 2nd Ex.Sess.) and Referendum Bill No. 24; and chapter 98, Laws of 1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 25 are each hereby repealed. [Enacted Laws 1973 ch 1 § 50, effective January 1, 1973 (Initiative Measure No. 276 § 50).]

42.18.130 State employee

"State employee" means any individual who is appointed by an agency head, as defined in RCW 42.18.040, or his designee, and serves under the supervision and authority of an agency as defined in RCW 42.18.030.

Notwithstanding the foregoing, the term "state employee" shall not include any of the following:

(1) Officers and employees in the legislative and judicial branches of the state of Washington; and

(2) A reserve of the Washington national guard, when he is not on active duty and is not otherwise a state employee.

An individual shall not be deemed an employee solely by reason of his being subject to recall to active service.

Every state employee shall be deemed either "intermittent" or "regular" as determined by the definitions contained in RCW 42.18.070 and 42.18.100 respectively.

The term "state employee" also includes any member of a commission, board, committee or any other multi-member governing body of an agency. [Amended by Laws 1973 ch 137 § 1.]

42.18.290 Civil action against present or former state employees

The attorney general of the state of Washington may bring a civil action in the superior court of the county in which the violation was alleged to have occurred against any state employee, former state employee or other person who shall have violated or knowingly assisted any other person in violating any provision of this chapter and in such action may recover the following damages on behalf of the state of Washington: (1) From each such person a civil penalty of either five hundred dollars or an amount not exceeding three times the amount of the economic value of anything received or sought in violation of * this 1973 amendatory act; and (2) any damages sustained by the state, which are caused by the conduct constituting the violation. [Amended by Laws 1973 ch 137 § 2.]

*Reviser's Note: "this 1973 amendatory act" [1973 c 137] consists of the 1973 c 137 amendments to RCW 42.18.130, 42.18.290, and 42.18.300 and the repeal of RCW 42.18.340.

42.18.300 Civil action against other violators

The attorney general of the state of Washington may bring a civil action in the superior court of Thurston county against any person who shall violate RCW 42.18.230. In such action the attorney general shall be awarded the following damages for the state of Washington: (1) A civil penalty of either one thousand dollars or an amount not exceeding three times the economic value of anything which has been given, transferred, or delivered in violation of RCW 42.18.230; and (2) any damages sustained by the state which are caused by the conduct constituting the violation. [Amended by Laws 1973 ch 137 § 3.]

42.18.340 General penalty

Repealed by Laws 1973 ch 137 § 4.

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CHAPTER 29B.

FREEDOM OF INFORMATION.

Article

1. Public Records, §§ 29B-1-1 to 29B-1-6.

ARTICLE 1.

PUBLIC RECORDS.

Sec.

29B-1-1. Declaration of policy.

29B-1-2. Definitions.

29B-1-3. Inspection and copying.

Sec.

29B-1-4. Exemptions.

29B-1-5. Enforcement.

29B-1-6. Violation of article; penalties.

§ 29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy. (1977, c. 147.)

§ 29B-1-2. Definitions.

As used in this article:

(1) "Custodian" means the elected or appointed official charged with administering a public body.

(2) "Person" includes any natural person, corporation, partnership, firm or association.

(3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

(5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics. (1977, c. 147.)

§ 29B-1-3. Inspection and copying.

(1) Every person has a right to inspect or copy any public record of a public body in this State, except as otherwise expressly provided by section four [§ 29B-1-4] of this article.

(2) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(3) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

(4) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

(a) Furnish copies of the requested information;

(b) Advise the person making the request of the time and place at which he may inspect and copy the materials; or

(c) Deny the request stating in writing the reasons for such denial.

Such a denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(5) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records. (1977, c. 147.)

§ 29B-1-4. Exemptions.

The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, that nothing in this article shall be construed as precluding an individual from inspecting or copying his own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers; and

(8) Internal memoranda or letters received or prepared by any public body. (1977, c. 147.)

§ 29B-1-5. Enforcement.

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date. (1977, c. 147.)

§ 29B-1-6. Violation of article; penalties.

Any custodian of any public records who shall willfully violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ten days, or, in the discretion of the court, by both such fine and imprisonment. (1977, c. 147.)

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19.21 Custody and delivery of official property and records

(1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers.

(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1). Any person may, at his own expense and under such reasonable regulations as the custodian prescribes, copy or duplicate any materials, including but not limited to blueprints, slides, photographs and drawings. Duplication of university expansion materials may be performed away from the office of the custodian if necessary.

(3) Upon the expiration of his term of office, or whenever his office becomes vacant, each such officer, or on his death his legal representative, shall on demand deliver to his successor all such property and things then in his custody, and his successor shall receipt therefor to said officer, who shall file said receipt, as the case may be, in the office of the secretary of state, county clerk, town clerk, city clerk, village clerk, school district clerk, or clerk or other secretarial officer of the municipality or district, respectively; but if a vacancy occurs before such successor is qualified, such property and things shall be delivered to and be receipted for by such secretary or clerk, respectively, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(4) Any person who violates this section shall, in addition to any other liability or penalty, civil or criminal, forfeit not less than \$25 nor more than \$2,000; such forfeiture to be enforced by a civil action on behalf of, and the proceeds to be paid into the treasury of the state, municipality, or district, as the case may be.

(5) (a) Any city council or village board may provide by ordinance for the destruction of obsolete public records. Prior to any such destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive such notice. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue.

(b) The period of time any city or village public record shall be kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in such ordinance shall be not less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board pursuant to s. 16.80(3) (e).

(c) Any city council or village board may also provide by ordinance for the keeping and preservation of public records by the use of microfilm or other reproductive device. Any photographic reproduction shall be deemed an original record for all purposes if it meets the standards established in s. 16.80(7), so far as the same may be applicable.

(6) Counties having a population of 500,000 or more may provide by ordinance for the destruction of obsolete public records without regard to ss. 59.715 to 59.717 and may undertake a management of records service. The period of time any public record shall be kept before destruction shall be determined by ordinance except that the specific period of time expressed within s. 59.715 shall apply as to those records or documents. Prior to any destruction of records, except those specified within s. 59.715 as well as those having a confidential character as determined by the county, at least 60 days' notice of such destruction shall be given in writing, to the historical society, which may preserve any such records it determines to be of historical interest; however no notice need be given for any of the aforesaid class of records for which destruction has previously been approved by the historical society or in which it has indicated that it has no interest for historical purposes. The county board may also provide, by ordinance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a record management service for the county and may appropriate funds to accomplish such purposes.

19.21 Custody and delivery of official property and records

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(5)(b) The period of time any city or village public record shall be kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in such ordinance shall be not less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board pursuant to s. 16.61(3)(e).

(c) Any city council or village board may also provide by ordinance for the keeping and preservation of public records by the use of microfilm or other reproductive device. Any photographic reproduction shall be deemed an original record for all purposes if it meets the standards established in s. 16.61(7), so far as the same may be applicable.

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(7) Any school district, except a city school district or a school district in a city of the 1st class, may provide for the destruction of obsolete school records. Prior to any such destruction, at least 60 days' notice in writing of

Changes or additions in text are indicated by underline

Deletions are indicated by asterisks * * *

such destruction shall be given the historical society, which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive the notice. The period of time a school district record shall be kept before destruction shall be not less than 7 years. This section shall not apply to pupil records under s. 118.125.

History—

Subsec. (5)(b), (c) amended by—

L. 1975, c. 41, § 52, eff. Aug. 19, 1975.

Subsec. (7) created by—

L. 1977, c. 202, § 1, eff. March 14, 1978.

59.13 Official oaths and bonds

(1) Each county officer named in this chapter, except county supervisors, shall execute and file an official bond and take and file the official oath within 20 days after receiving official notice of * * * election or appoint-

ment, or if not officially notified, within 20 days after the commencement of the term for which * * * elected or appointed. Every county supervisor shall take and file the official oath within 20 days after receiving official notice of * * * election or appointment, or if not officially notified, within 20 days after the commencement of the term for which * * * elected or appointed. Every deputy appointed by any such officer shall take and file the official oath and if * * * the deputy neglects shall forfeit \$100. Such official bonds shall be in sums and with sureties, as follows:

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(1) (b) Surveyor, * * * \$5,000.

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(3) Each such bond shall be guaranteed by the number of personal sureties prescribed by law, or if not prescribed, by the number fixed by the county board within the limitations, if any, prescribed by law, or by a surety company as provided by * * * 632.17(2). In the case of the county clerk, county treasurer and county abstractor the county board may by resolution require them to furnish bonds guaranteed by surety companies and direct that the premiums be paid as provided in s. 10.01(8).

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59.14 Offices, where kept; when open

(1) Every sheriff, clerk of the circuit court, register of deeds, county treasurer, register of probate * * *, county clerk and county surveyor shall keep his office at the county seat in the offices provided by the county or by special provision of law; or if there is none, then at such place as the county board directs. The county board may also require any elective or appointive county official to keep his office at the county seat in an office to be provided by the county. All such officers shall keep such offices open during the usual business hours each day, Sundays excepted, and except that the county board of each county may permit said officers to close their offices on Saturday or on legal holidays for such time as the county board directs, and with proper care shall open to the examination of any person all books and papers required to be kept in his office and permit any person so examining to take notes and copies of such books, records, papers or minutes therefrom.

History—

Subsec. (1) amended by—

L. 1969, c. 499, § 3, eff. March 26,

1970.

L. 1959, c. 309.

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(3) Any county board may by ordinance provide that the cut-off reception time for the filing and recording of documents shall be advanced by one-half hour in any official business day during which time the register of deeds office is open to the public, in order to complete the processing, recording and indexing to conform to the day of reception but for all other purposes the office shall remain open to the public.

59.71 Records where kept; public examination; rebinding; transcribing

(1) The books, records, papers and accounts of the county board shall be deposited with the respective county clerks and shall be open without any charge to the examination of all persons.

(2) When any book * * *, public record or the record of any town, village or city plat in any county office shall, from any cause, become unfit for use in whole or in part, the county board shall * * * order that * * * the book, record or plat be rebound or transcribed * * *. If the order * * * is to rebind such book, record or plat, * * * the rebinding must be done under the direction of the officer in charge of * * * the book, record or plat, and in his * * * office * * *. If the order * * * is to transcribe such book, record or plat, * * * the officer having charge of the same * * * shall provide a suitable book for that purpose; and thereupon such officer shall transcribe the same in the book so provided and carefully compare the transcript with the originals, and make the same a correct copy thereof, and shall attach to such transcript a certificate over his official signature that he has carefully compared the matter therein contained with, and that the same is a correct and literal copy of the book, record or plat from which the same was transcribed, naming such book. Such copy of book, record or plat, so certified, shall have the same effect in all respects as the original, and such original book, record or plat shall be deposited with the county treasurer and carefully preserved except in counties having a population of 500,000 or more where a book containing a tract index is rewritten or transcribed, the original book may be destroyed. The order of the county board directing the transcribing of any book, record or plat duly certified by the county clerk shall, with such certificate, be recorded in each copy of book, record or plat transcribed. The fee of the officer for such service shall be fixed by the board, not exceeding * * * 10 cents per folio, or if such books or any part thereof consist of printed forms, not to exceed * * * 5 cents per folio for such books or records; to be paid by the county.

Source: L. 1971; c. 118, § 1, eff. Nov. 7, 1971.

WYOMING Statutes
1975 Cumulative Supplement

Freedom of Information (Open Records)
Right to Inspect Records
Volume 4

§ 9-692.1. Classification and definitions.—Definitions as used in this act [§§ 9-692.1 to 9-692.5]:

(a) The term "public records" when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the State of Wyoming and any counties, municipalities and political subdivisions thereof and by any agencies of the State of Wyoming, counties, municipalities, and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law.

(b) Public records shall be classified as follows:

(i) The term "official public records" shall include all original vouchers, re-

ceipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the State of Wyoming or any agency or subdivision thereof may be a party; all fidelity, surety and performance bonds; all claims filed against the State of Wyoming or any agency or subdivision thereof; all records or documents required by law to be filed with or kept by any agency or the State of Wyoming; and all other documents or records determined by the records committee to be official public records.

(ii) The term "office files and memoranda" shall include all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not above defined and classified as official public records; all duplicate copies of official public records filed with any agency of the State of Wyoming or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and all other documents or records, determined by the records committee to be office files and memoranda.

(c) The term "writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics.

(d) The term "political subdivision" means and includes every county, city and county, city, incorporated and unincorporated town, school district and special district within the state.

(e) The term "official custodian" means and includes any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(f) The term "custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(g) The term "person" means and includes any natural person, corporation, partnership, firm or association.

(h) The term "person in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative. (Laws 1969, ch. 145, § 1.)

§ 9-692.2. Inspection—Generally.—(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this act [§§ 9-692.1 to 9-692.5] or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as shall be reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact.

(c) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact. (Laws 1969, ch. 145, § 2.)

§ 9-692.3. Same—Grounds for denying right of inspection; statement of grounds for denial; order to show cause; order to restrict disclosure; hearing.—(a) The custodian of any public records shall allow any

person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (d) of this section:

- (i) Such inspection would be contrary to any state statute;
- (ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or
- (iii) Such inspection is prohibited by rules promulgated by the supreme court, or by the order of any court of record.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest;

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination, examination for employment or academic examination; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iii) The specific details of bona fide research projects being conducted by a state institution;

(iv) The contents of real estate appraisals made for the state or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the state or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by Wyoming Statutes.

(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(c) If the right of inspection of any record falling within any of the classifications listed in this subsection is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it may be allowed to all such news media.

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports;

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except that such files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;

(iv) Letters of reference;

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions; and

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability

of any student except to the person in interest or to the officials duly elected and appointed to supervise him.

(e) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied, and it shall be furnished forthwith to the applicant.

(f) Any person denied the right to inspect any record covered by this act [§§ 9-692.1 to 9-692.5] may apply to the district court of the district wherein the record is found for any order directing the custodian of such record to show cause why he should not permit the inspection of such record.

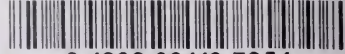
(g) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Wyoming Rules of Civil Procedure and shall have the right to appear and be heard. (Laws 1969, ch. 145, § 3.)

§ 9-692.4. Copies, printouts or photographs; fees.—(a) In all cases in which a person has the right to inspect any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printingout or photographing as he may charge for furnishing copies under this section. (Laws 1969, ch. 145, § 4.)

§ 9-692.5. Penalty.—Any person who willfully and knowingly violates the provisions of this act [§§ 9-692.1 to 9-692.5] shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars (\$100.00). (Laws 1969, ch. 145, § 5.)

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